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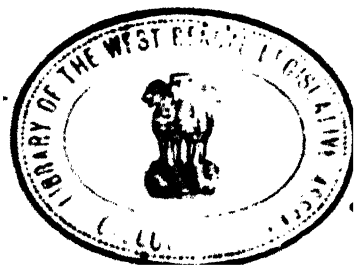
INDIAN ELECTION PETITIONS

VOLUME II

1923-25

by

JAGAT NARAIN, B.A., LL.B., M.R.A.S.
ADVOCATE OF THE HIGH COURT OF
JUDICATURE AT ALLAHABAD



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THE REPORTS

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INDIAN

CENTRAL PROVINCES LEGISLATIVE COUNCIL

AKOLA SOUTH (N.M.R.)

MR. DINKAR RAO DHAR RAO NAIK RAJURKAR
(*Petitioner*)

versus

MR. JANARDAN BHALCHANDRA SANE (*Respondent*)

Where the form of nomination prescribes that it should be presented at the office of the Returning Officer, the presentation of a nomination paper to the Returning Officer at his residence during the prescribed hours is sufficient compliance with the rules, when it was found that the particular officer was in the habit of doing his work at his residence after a certain time in the day.

It was contended that the nomination paper of the Respondent was invalid having been presented at the residence of the Returning Officer.

The question is the one that has given rise to much discussion, viz., whether the presentation at the bungalow of the Deputy Commissioner is a proper and sufficient presentation within the rules. It has been strenuously contended that Rule 10 does not prescribe any place for presentation, and therefore the delivery to the Returning Officer in his office room at the bungalow complies with the rule. Against this it is urged that Rule 10(3) must be read with the form of nomination given in Schedule 3 which shows that the presentation must be at the office, and that office is the same building as is mentioned in Clauses (7) and (9) of Rule 10(3).

The Commissioners have considered this vexed question, and have decided that the presentation at the bungalow does comply with the rule. At first sight it appears that the footnote on the nomination form goes beyond Clause (6) of Rule 10 and is *ultra vires* in inserting the words "at his office", but a further consideration shows that this is not so. Clause (6) rejects all nomination papers presented after 3 P.M. on the day fixed for presentation; but it cannot be assumed conversely that all papers received before that time must be accepted, as that would conflict with Clause (3) which prescribes that the presentation must be between 11 A.M. and 3 P.M. Nomination papers can be rejected on other grounds and the footnote to the nomination form is an indication that such papers will be invalid unless presented at the office. The place of presentation,

therefore, becomes important. We are of opinion that the whole form of nomination must be read as a part of Rule 10(3). The full meaning of this clause cannot be ascertained without reference to the form. The clause is incomplete without the form itself. Then when the form is read, it is found to contain a clear direction as to the place of presentation. Twice it is mentioned that the delivery must be at the office of the Returning Officer, and that direction cannot be excluded from the rule or disregarded by the candidate. The question then arises whether the office room in the bungalow is an office for the purpose of such presentation. The word "office" has never, so far as we are aware, been judicially defined; but we are of opinion that in this particular case we have sufficient material for a decision. The schedule in the Regulation 3 under Rule 14 shows that the Returning Officer is the Deputy Commissioner (*ex officio*) and we conclude that the office of the Returning Officer is the office of the Deputy Commissioner as such. Now undoubtedly *prima facie* the office of the Deputy Commissioner is the building known as the kachery where the courts are held, and general administration of the district is conducted. But we have clear evidence, which we find satisfactory, that this particular Deputy Commissioner did his work in the kachery until about 2 P.M. daily and did the rest of his work in the office of his bungalow from 2 P.M. onwards. This custom was well known to the members of the Bar and the litigant public. Thus by custom there were two offices with fairly well-defined times. Moreover, we have evidence that the Returning Officer had left specific instructions that any candidate bringing nomination papers should be sent to the bungalow. Hence, although we feel that it would certainly have been better if the Returning Officer had remained in his kachery on those days, until 3 P.M. we consider that the nomination papers of Mr. Sane were delivered to the Returning Officer "at his office" within the meaning of the rules.

We find that the nomination paper was validly presented.

Certain other allegations of undue influence, etc., were all disbelieved on facts and evidence.

Petition dismissed with costs assessed at Rs.350.

F. J. WOODWARD
K. G. DAMLE
M. J. DASTUR

UNITED PROVINCES LEGISLATIVE COUNCIL
ALIGARH DISTRICT EAST (N.M.R.)

THAKUR UDAYA VIR SINGH (*Petitioner*)

versus

RAJ KUMAR SINGH (*Respondent*)

The description of "Aligarh District East" constituency as "Aligarh East" in the nomination paper was held to be a trivial misdescription and therefore condoned.

The question of the age of the Respondent to entitle him to be a candidate can be raised at the time of the petition, even though no objection was raised about it before the Returning Officer.

The improper refusal of a nomination paper by the Returning Officer is a material irregularity which affects the result of the election, and the election would be set aside on that ground.

In the space for the name of the constituency in all his nomination papers the Petitioner had put down "Aligarh East Non-Muhammadan Rural". The Returning Officer rejected the nomination papers by the following orders:—

"Declared invalid as the name of the constituency has been incorrectly given. This is a technical matter in which I hold that absolute accuracy is essential."

Besides the Petitioner there were two other candidates for the same constituency, viz., Kunwar Raj Kumar Singh and Pundit Sheo Sahai. The nomination paper of Pundit Sheo Sahai was also rejected.

A written objection to the nomination of Kunwar Raj Kumar Singh was taken by Baldeo Sahai Sharma on the ground that Raj Kumar Singh was under 25 years of age and therefore not eligible for election to the Legislative Council, but this objection appears to have been summarily rejected without any enquiry.

Kunwar Raj Kumar Singh was returned unopposed as a member of the Legislative Council. His election has been called in question on the grounds of which the main is that Raj Kumar Singh was under 25 years of age on the day of his nomination.

We are of opinion that the refusal of the Petitioner's nomination by the Returning Officer was not justified. The abbreviation of the name of the constituency by the omission of the word "district" should have caused no misgiving in the mind of the Returning Officer as to the identity of the constituency with which "Aligarh East" could have been confounded. The misdescription was trivial and should have been condoned. This is the principle underlying the English Ballot Act.

It was conceded by the learned counsel for the Respondent No. 1 that the question of the latter's age could be raised before us even though no objection to his age was taken before the Returning Officer. On a consideration of the evidence produced by the parties it was held that the Respondent was 26 years of age at the time of the nomination.

It follows from what has been said above that the acceptance of the nomination of Respondent No. 1 was not improper, but the refusal of the nomination of the Petitioner was improper. It is clear that the election of Respondent No. 1 was materially affected by the improper refusal of the Petitioner's nomination.

The election of Kunwar Raj Kumar Singh should be held to be void. Parties to bear their own costs.

H. NELSON WRIGHT
V. E. G. HUSSEY
G. C. BADHWAR

UNITED PROVINCES LEGISLATIVE COUNCIL
ALIGARH DISTRICT WEST (N.M.R.)

THAKUR SHIB NARAYAN SINGH (*Petitioner*)

versus

THAKUR LAKSHMI RAJ SINGH (*Respondent*)

The object to be kept in filling up the nomination paper is that a person who sees the nomination paper may be able to decide whether the candidate is properly nominated or assented to by enrolled burgesses and to determine this by a mere comparison of the nomination paper and burgess roll without any further and laborious enquiry.

No inaccurate description of any person should hinder the operation of the law, with respect to that person provided the description be such as to be commonly understood. It is the misleading of the electorate that is to be avoided.

The Petitioner was nominated by means of three nomination papers but all these were declared invalid by the Returning Officer on the following grounds—

(*a*) "As the name of his proposer given as Bhawani Shankar" does not agree with the Electoral Roll where the name is given as 'Bhamani Shankar';

(*b*) "That the age has not been properly given. Only '41' has been written, and the word 'years' has been omitted. This is a technical matter in which I hold that absolute accuracy is es-

sential. I am not entitled to make any presumption whatsoever as to what is correctly intended;

(*c*) "As the name of the proposer given as 'Lajja' does not agree with the Electoral Roll, where the name 'Lajia' is given. These are two different names".

The Petitioner had taken an objection before the Returning Officer as to age of the Respondent, alleging that Thakur Lakshmi Raj Singh was under 25 years of age on the day of his nomination and such was ineligible for election, but that the Returning Officer overruled the objection and declared the nomination of the Respondent to be valid. Thus Thakur Lakshmi Raj Singh, being the only validly nominated candidate, was returned unopposed.

The Petitioner's nomination papers are exhibited as Exhibits 1, 2 and 3.

In Ex. 1 the name of the proposer is signed "Bhawani Shankar" and his Electoral Roll number is given as No. 1752. The Electoral Roll in Aligarh is prepared in both Urdu and Hindi. The election officer Babu Mahadeo Prasad has stated that "in this district we have been acting upon the Electoral Roll in Urdu and not on that in Hindi". He admitted, however, that there was no Government order which preferred the Urdu to the Hindi copy of the Electoral Roll and found that the name given against No. 1759 was "Bhawani Shankar". In consequence of this disagreement with the signature of the proposer he declared the nomination paper invalid. If, however, he had looked at the Hindi Electoral Roll he would have found that the name there given against No. 1762 was "Bhawani Shakar", i.e., the exact name given by the proposer in nomination paper Ex. 1.

We have been referred to and taken through a number of English decisions on questions cognate to the point which we have before us. These are, however, anterior to and have doubtless been considered in the Indian Electoral Law, and we see no necessity in this case to travel beyond the Indian rules, which are clear and full.

Regulation 9 made under Rule 13(1) of the United Provinces Electoral Rules and printed on page 3 of the United Provinces Gazette, Extraordinary, dated July 4, 1923, sets out the grounds on which the Returning Officer may refuse any nomination. Among them are:

9(1)(2) that the name of a proposer or seconder is not entered on the Electoral Roll of the constituency, and 9(1) and (5) that the candidate or any proposer or seconder is not identical with the person whose electoral number is given in the nomination paper as the number of such candidate, proposer or seconder as the case may be.

Rule 9(1) further contemplates the refusal of a nomination paper after such summary inquiry as the Returning Officer thinks necessary.

It needed a very summary inquiry, if any, in this case to satisfy the Returning Officer that the proposer on Ex. 1 was identical with the person shown in the Electoral Roll against the corresponding number. A mere reference to the Hindi Electoral Roll would set the matter at rest.

The insistence by the Returning Officer on absolute literal accuracy was overdone. The object to be kept in view in filling up the nomination paper is "that a person who sees the nomination paper may be able to decide whether the candidate is properly nominated or assented to by enrolled burgesses and to determine this by a mere comparison of the nomination paper and burgess roll without any further and laborious inquiry". (Moorhouse *versus* Linney, 15 Q. B. D.1885)

It is further laid down in the English Act, 45 and 46 Victoria C. 50, on a cognate subject that no inaccurate description of any person should hinder the operation of the Act, with respect to that person provided the description be such as to be commonly understood (*ibid*). It is the misleading of the electorate that is to be avoided.

We think that the nomination paper Ex. 1, satisfies the principles above enumerated. Even if the fact that the name of the proposer is given in the Hindi Electoral Roll in the same form as in the nomination paper be ignored, we are of opinion that the writing of the proposer's name as "Bhawani" and "Bhamani" are interchangable readings of one and the same name. Such interchange of letters in words is quite a common feature in this Province and is in keeping with philological rules.

We, therefore, find that the Returning Officer improperly declared the nomination paper Ex. 1 to be invalid.

That being so, it is unnecessary for us to examine the other two nomination papers Exs. 2 and 3, but as their invalidation has been challenged we may state that in our opinion, the omission of the word "years" after 41 in Ex. 2 in the space for age of the candidate was a clerical omission of no importance and should have been condoned. The refusal of the nomination paper Ex. 3 because the proposer signed himself "Lajia" instead of "Lajja" as shown in the Urdu Electoral Roll, was uncalled for. In this case, too a glance at the Hindi Electoral Roll would have been sufficient to convince the Returning Officer of the proposer's identity with the voter entered as number 1045 on that roll. Both these nomination papers are, in our opinion, valid and the petitioner was duly qua-

lified to stand as a candidate for election to the Council.

After discussing the evidence about the age of the Respondent the Commissioners held as follows:—

"We find that the Respondent's age was 24 years 8 months and 1 day on the day of his nomination, and that he was ineligible for election under Rule 5 (1) (*f*) of the United Provinces Electoral Rules."

We, therefore, recommend to His Excellency the Governor that the election of Thakur Lakshmi Raj Singh should be held void; that the Petitioner Thakur Shib Narain Singh should be declared to be duly elected as a member of the United Provinces Legislative Council, and that the Respondent should pay the Petitioner's costs amounting to Rs.40-8-0.

H. NELSON WRIGHT
V. E. G. HUSSEY
G. C. BADHWAR

UNITED PROVINCES LEGISLATIVE COUNCIL
ALIGARH MUTTRA AND AGRA DISTRICTS (M.R.)

MOHAMMAD ABDUL WAHAB (*Petitioner*)

versus

OBEDUR RAHMAN KHAN (*Respondent*)

The Commissioners are not competent to go behind their appointment as such, and to enquire into the question of the proper presentation of the petition, the Commissioners must assume that the prior requisites have been complied with, otherwise the petition would have been dismissed by the Governor.

There is no authority for the proposition that the date of declaration of the candidate assenting to his nomination must be in his own handwriting.

The Respondent to a petition cannot be permitted to call in question the validity of the Petitioner's nomination without his having filed a recriminatory petition.

The nomination of Mohammad Abdul Wahab was refused by the Returning Officer on the ground that his declaration on the nomination paper assenting to his nomination was not dated by himself, but by some other person.

The Respondent has challenged the Petitioner's nomination and the question arose at the outset whether he was entitled to do this seeing that there is no recriminatory petition under Rule 42 of the Electoral Rules before us. Respondent's counsel relied on Order

21, Rule 22, Civil Procedure Code in support of his position. We are of opinion that we cannot apply that provision in this case. We are bound to adapt our procedure to that laid down in the Civil Procedure Code "as nearly as may be" but election law is special law and Section 42 of the Electoral Rules has set out distinct conditions under which a recriminatory petition is permissible, viz., when the petitioner claims the seat for himself. In no other case is a recriminatory petition contemplated. Nor, indeed, would there be any useful object in making inquiry into the qualification for candidature of a person who does not claim the seat for himself. Our business is confined in a case like the present one to the question whether the Respondent has been properly elected.

We, therefore, think that the analogy of Order 21, Rule 22 is not a real one. Apart from this the pleadings of the parties disclosed the following two issues:—

(1) Was the invalidation of the Petitioner's nomination paper by the Returning Officer improper?

(2) Was the Election Petition duly presented and have the Commissioners any authority to inquire into the point after the petition had been accepted by the Governor?

The second issue relates to the due presentation and may conveniently dealt with first. We are of opinion that we are not competent to go behind our appointment as commissioners for the trial of this petition and are debarred from inquiring into the question of the proper presentation of the Election Petition subsequent to its admission by the Governor. We must presume that prior requisites have been complied with otherwise the petition would have been dismissed by the Governor under Rule 36(1). We agree with the views expressed by the Commissioners in the Salem and Coimbatore cum-North Arcot case in 1921 (Indian Election Petitions, Hammond, page 203). The same question has been similarly decided in the report of the election case No. 3 of 1924, Bengal (Dinajpore Mohammedan Constituency), printed at page 883 of the Calcutta Gazette of April 30, 1924. Issue 2 is therefore decided against the Respondent.

This brings us to the first and the main issue, viz., whether the rules require that the declaration by a candidate on the nomination paper shall be dated by the candidate himself.

Rule 11, Sub-rule 3 of the United Provinces Electoral Rules requires each candidate, either in person or by his proposer and seconder together, to deliver to the Returning Officer or other authorised person "a nomination paper comtemplated in the form prescribed in Schedule 3 and subscribed by the candidate himself as assenting to his nomination and by two persons as proposer and

seconder."

It is to be noted that the word "subscribed" applies as much to the proposer and seconder as to the candidate. Yet the form in Schedule 3 provides no space for any date under the signature of proposer and seconder. "Subscribe" means to write under some thing to give consent to something written by signing one's name underneath (Attorney General *versus* Bradlaugh, 54 L. J. Q. B. 213). We can discover no authority in support of the Returning Officer's view that the date of the declaration of the candidate assenting to his nomination must be in his own handwriting. We think that if the legislature had intended that the space provided for the date of the declaration must be filled in by the candidate himself and by no other person, it would have expressly said so, as it has done in the case of the Returning Officer, who is required in his certificate on the said form in Schedule 3 to state the date and hour of the delivery of the nomination paper to him. We observe that the nomination paper form prescribed in Schedule 2 of the Ballot Act in England altogether omits the date of the candidate's declaration, showing that it is not essential.

In the recent case of S. N. Haldar *versus* S. N. Malik, reported at Page 172, Part 1 of the Gazette of January 30, 1924, in which the candidate had omitted to fill in the date of his declaration the Commissioners held that the omission of the date was a technical irregularity and no more than an unsubstantial departure from the law. We agree with this view and hold that "subscribed" in Rule 11(3) of the Electoral Rules means signed and does not include dating. We find that the nomination paper of the Petitioner was delivered duly completed and subscribed in confirmity with the provisions of Rule 11(3) of the Electoral Rules. The invalidation of that nomination paper by the Returning Officer was, therefore, improper.

We would, therefore, recommend to His Excellency the Governor that the election of the Respondent, Obedur Rahman Khan, be held void and that he should pay the Petitioner's costs which amount to no more than Rs.3.

H. NELSON WRIGHT
V. E. G. HUSSEY
G. C. BADHWAR

THE PUNJAB LEGISLATIVE COUNCIL
AMRITSAR CITY (MOHOMMEDAN URBAN)

SHEIKH MUHAMMAD SADIQU (*Petitioner*)

versus

MIAN MUHAMMAD SHARIF (*Respondent*)

The term agent has a wide significance in election law. No authorisation or declaration in writing is necessary and agency has to be inferred from the circumstances and conduct of parties.

One *F* was found to have canvassed for the Respondent and to have led voters to and identified them at the polling booth. *F* was held to be an agent within the meaning of the election law.

Procuring of personation by an agent falls under Part 1 of Schedule 5 of the Punjab Electoral Rules, and is sufficient to render the election void even though the candidate himself had no knowledge of it.

All expenses, great or small, incurred in connection with the election ought to be entered in the return of election expenses, and the explanation that certain things were taken from the Respondent's house or shop cannot be taken as satisfactory.

If any men in the service of the Respondent are placed on election work, their salaries for the period should be shown in the return of election expenses.

Though no maximum of expenses has yet been fixed, yet the rule regarding the filing of a correct return of election expenses has to be strictly complied with.

In India a false return of election expenses is not by itself sufficient to avoid an election, but subjects both the candidate and his agent to a disqualification, and consequent vacation of seat.

Where there are three candidates at an election, and the Respondent's election is set aside, the Petitioner cannot for that reason alone get the seat, as the votes cast in favour of the unseated candidate cannot be said to have been cast away, and it is fair and reasonable to give the electorate an opportunity of making a fresh choice.

The petitioner can be allowed or required to give further and better details with regard to the instances referred to in the list of particulars, but he cannot be permitted so to amend his petition as to introduce fresh instances of corrupt practices. The word "particulars" in Rule 33 of the Punjab Electoral Rules do not include fresh instances of a similar kind. Nor can the Commissioners fall back on the provisions of Order 6, Rule 17 to allow amendment, when a specific rule of election law forbids it.

The Petitioner's main allegations are that the nomination paper of Respondent No. 1 was invalid on account of certain irregularities and omissions, and that Respondent No. 1 and his agents have been guilty of the corrupt practices of procuring "personation" under Part 1 of Schedule 5 of the Electoral Rules. The Petitioner also challenges the correctness of the return of expenses filed by Respondent No. 1, and claims the seat for himself on the ground that he secured the highest number of votes next to him.

Several of the charges in the original petition had to be struck off for want of adequate particulars, while others were abandoned at the time of argument. The Petitioner applied for permission to amend his petition by introducing certain fresh charges of personation, but the application was refused for reasons given in our order, a copy of which forms an annexure to this report. The only pleas or charges that were put in issue and eventually pressed before us were those given below, and it will be sufficient for the purpose of this report to confine ourselves to the same:—

(*a*) That the nomination paper of the Respondent was invalid, and its improper acceptance by the Returning Officer renders the election void;

(*b*) That Fazal Hussain, the polling agent, (or, at any rate, an agent) of the Respondent procured the "personation" of a voter named Mohammad Ibrahim in Ward No. 12, and this was done with the knowledge and connivance of the Respondent; and

(*c*) The return of expenses filed by the Respondent was false in material particulars.

As regards (*a*) there is no doubt that there are several omissions and irregularities in the nomination paper, some of which at any rate cannot be said to be altogether immaterial. But objections were raised before the Returning Officer, and the nomination paper was accepted by him after satisfying himself as regards the same. Under the circumstances it is not preferable to dispose off the petition on the technical objections relating to the nomination paper, especially as we are of opinion that the petitioner must succeed on merits on two other charges specified above. We, accordingly, proceed to discuss the latter charges.

There is ample evidence on the record to show that the name of Muhammad Ibrahim was wrongly entered twice in the Electoral Roll, viz., in Ward No. 4 and Ward No. 12; that Muhammad Ibrahim voted in Ward No. 4 and not in Ward No. 12, and that some other person voted for him in the latter ward. The Petitioner believed that one Barkat Ali had personated Muhammad Ibrahim. Barkat Ali denied having done so, but the Petitioner's

allegation has been proved to be correct by the testimony of the Finger-Print Expert. At the time Barkat Ali personated Muhammad Ibrahim, the vote was challenged by an agent of the Petitioner. Barkat Ali was, however, identified by one Fazal Hussain on behalf of the Respondent as the right voter and then the vote was allowed to be recorded. Barkat Ali's thumb impression was taken at the time on the list of challenged votes, and the Finger-Print Expert has found that this impression to correspond with his thumb impression taken before us.

After a discussion of evidence the Commissioners held—

In view of the evidence discussed above, we feel no hesitation in holding that Fazal Hussain helped the Respondent by canvassing before the polling day and by taking voters to the polling booth and identifying them on the polling day. The question whether he was given a written authority as a polling agent or not is not material. Kartar Singh, the Presiding Officer has deposed that he was shown a written authority by Fazal Hussain, and there is no reason whatever to disbelieve his statement. But apart from the written authority, there is no room for doubt that he was acting as a *de facto* polling agent, and in view of his close connection with the Respondent and our finding that he was also canvassing for him we feel no doubt that he must have acted on behalf of the Respondent at the polling booth, 'with his knowledge and consent'.

The facts proved above are sufficient to constitute agency. The term 'agent' has a wide significance in election law, and it has been defined to include 'any person who is held by the Commissioners to have acted as an agent with the knowledge or consent of the candidate' (*vide* Rule 30, Punjab Electoral Rules). No authorisation or declaration in writing is necessary, and agency has to be inferred from the circumstances and the conduct of the parties (*cf.*, 4 O'M. and H., page 10, 1 I. E. P. 105 at 108). We have found that Fazal Hussain did canvassing for the Respondent and led and identified voters at the polling booth. These facts have been held to be sufficient to established agency (*cf.*, Rogers' on Elections, 19th Edition, volume 2, pages 601 and 605).

We accordingly find that Fazal Hussain was an agent of the Respondent and was guilty of the corrupt practice of procuring personation.

There is no evidence on the record to prove that the Respondent had any knowledge of the corrupt practice, but the procuring of personation, even by an agent, falls under Part 1 of Schedule 5 of the Punjab Electoral Rules and is sufficient to render the election of the returned candidate void (*see* Rule 44(*b*)).

Although only one instance of personation has been established, we are unable to take the case under Rule 44, Clause 2, as the Respondent has made no effort whatever to show that the conditions of the clause were fulfilled. He has produced no evidence that he had taken any precautions or issued any instructions to his agents with a view to prevent commission of corrupt practices. If the Respondent was content to leave his agents to conduct themselves in such manner as they chose he cannot escape the consequences of their doings. We have to deal with the return of election expenses filed by the Respondent. The Petitioner's main contention in respect of the return is that it does not include the various items of expenditure incurred by the Respondent in connection with the election, viz.:—

(1) Cost of certain posters issued in favour of the Respondent;

(2) Cost of petrol;

(3) Cost of stationery;

(4) Rents, wages, etc., in connection with the rents, etc., pitched for voters near the polling booth; and

(5) Pay of the election agents.

The return shows no expenditure whatever under (2), (3), (4) and (5). The explanation offered is that very little stationery was used, and that it was taken from the Respondent's shop. The Respondent states that he did not, as a rule, go in his motor for canvassing purposes,—though he may have at times done some canvassing, when he went out in his car on other business. The tents pitched near the polling booth are said to be the property of the Respondent and it is stated that the men from the factory did the work of pitching the tents without any extra wages. Abdul Rahman, the election agent, is an employee of the Respondent, and is said to have worked as an election agent without any extra remuneration.

It is difficult to believe that Abdul Rahman, and all other employees of the Respondent worked for him in the election without extra remuneration in some form or other. It is also unlikely that a man in Respondent's position and possessing a car should not have used his car for canvassing purposes. As regards stationery too, a fair amount must have been required. We think the Respondent ought to have shown in his return all expenses in connection with his election, big or small, and the explanation that certain articles were taken from the Respondent's shop or house cannot be considered satisfactory. We also think that if any men in the service of the Respondent were put on election work, their wages for the period should have been shown in the return (*cf.*, 6 O'M. and H. 5)

The explanation offered with respect to item (1) above is still more unsatisfactory. The Respondent admittedly issued some posters from time to time during the course of his election campaign. A voucher for Rs.117 paid to the Vakil Press in connection with the printing has been attached to the expenses; but the voucher does not include some of the posters issued in Respondent's favour. After discussing the evidence the Commissioners held. "In view of all the circumstances we hold that the item of 117 in the return does not represent the real expenditure in connection with the election."

There are other facts which show that the Resppondent and his election agent did not keep proper accounts, and the return of expenses cannot be looked upon as reliable. Abdul Rahman, Respondent's election agent, has produced an account book which could not in any sense, be considered regular or to fulfil the requirements of Rule 21. According to this rule, the election agent has to keep separate and regular books of account and enter therein all the particulars of expenditure, which are eventually to be shown in the return of expenses. Abdul Rahman does not appear to have kept any daily account. The account produced consists of entries on four pages, and from their appearance these entries appear to have been made at one and the same time subsequently.

The above facts do not require any comment. They show beyond any doubt that the rule requiring regular accounts of election expenditure has been flagrantly disregarded by the Respondent and his election agent, though they carry on extensive business and know how to keep accounts. Consequently, the return of expenses based on such accounts as have been produced by the election agent in this case, cannot be accepted as reliable. In view of the evidence discussed already we hold the return to be false in material particular, viz., the printing charges in connection with posters, circulars, etc., issued in connection with the election.

It is true that no maxium has yet been prescribed in India for the expenses that can be incurred by a candidate. But the absence of such a maxium does not relieve a candidate for the necessity of compliance with the rule. The election expenses afford a useful check on the methods employed in the conduct and management of an election, and the matter cannot be treated lightly. It has been recently held in England that an election court might avoid an election if the return of expenses has been carelessly prepared, even if no corrupt intention is proved. (*See* Hammond's Indian Candidate and Returning Officer, pages 79-80). According to the Indian rules a false return of expenses is not by itself

sufficient to avoid an election. But we have to report that the Respondent as well as his election agent, Abdul Rahman, have incurred the disqualification referred to in Rule 5 (4) of the Punjab Electoral Rules.

The Petitioner has prayed for a declaration that he was duly elected inasmuch as he secured the highest number of votes next to the Respondent, Mohammad Sharif. A case recently occured in Bombay and reported in the Bombay Government Gazette, Extraordinary, dated March 10, 1924, has been cited as an authority. The point has however not been discussed in the report of that case at any length, and we are unable to see the relevancy of Rules 24 and 43, which have been quoted by the learned Commissioners in support of their view. With all respect, we must say that we find ourselves unable to follow this decision. There were three candidates at the election, and if Responent No. 1 were out of the contest, it cannot be said with certainty that the Petitioner would have succeeded. The Respondent got about 16,000 votes. These votes cannot be treated as having been thrown away (*See* pages 129-131, Rogers' on Election, Vol. 2, Edition of 1919 and 1 I. E. P. page 221). It seems only fair and reasonable that these voters should have an oppotunity of making a fresh choice. We therefore hold that the Petitioner is not entitled to the declaration asked for and a bye-election will be necessary.

We award the Petitioner Rs.750 as costs against Respondent No. 1. The costs may be deducted from the security of Rs.1,000 deposited by Respondent in connection with his recriminatory petition.

M. V. BHIDE
J. M. MACKAY
D. C. RALLI

ANNEXURE

The Petitioner in this case has applied for permission to amend the list of corrupt practices attached to his petition by including therein certain other instances of alleged corrupt practices which were subsequently brought to his notice.

Counsel for the Petitioner has tried to justify the proposed amendment on the ground that Paragraph (5) of the petition clearly mentions that a large number of persons recorded votes in favour of Respondent No. 1 by falsely personating as proper voters, and that, therefore the amendment does not introduce any new charge, but only fresh instances. He has cited certain English

decisions cited on pages 218-19 of the Law of Parliamentary Elections and Election Petitions by Fraser (3rd edition) in support of his argument. There is no doubt that in some of the reported cases in England considerable latitude seems to have been given in the matter of amendment. But we consider it unnecessary to discuss these cases so far as the present issue is concerned, as it is not disputed before us, that the procedure in England in this respect is different and is not governed by the same rules as those which obtain in India. The present application is for amendment of the list attached to the petition, which is prescribed by Rule 33 of the Punjab Electoral Rules (1923). According to Clause (2) of this rule, the Petitioner is required to give full particulars of all the alleged corrupt practices in the list. Clause (3) of the rule defines the scope of the amendment of this list, which can be permitted. Clause (3) lays down that the Commissioners may allow the particulars included in the said list to be amended or order such further and better particulars in regard to any matter referred to therein to be furnished as may in their opinion be necessary for the purpose of ensuring a fair and effectual trial. Now, as already stated above, Petitioner has referred to only one instance of personation in Paragraph (1) of the list, and by the proposed amendment he seeks to introduce several other instances into the list. We consider that this clearly goes beyond the scope of Clause (3) of Rule 33. Petitioner can be allowed or required to give further details with regard to the instances referred to in the original list, but we do not think it is open to him now to introduce fresh instances. It would be, in our opinion, straining the language of the rule to hold that the word "particulars" includes fresh instances of a similar kind.

It was urged that a different view as regards the scope of amendment was taken in the Attock case of 1920 (1 I. E. P. 1) but the rules then in force were different. In the Election Rules of 1920, there were no provisions as regards the filing of a list giving particulars of the alleged corrupt practices or the amendment thereof corresponding to Clause (2) and (3) of Rule 33. It seems to us that these clauses have been framed with a view to give the earliest possible notice of the charges relied on to the Respondent and to prevent his being harassed by fresh matter being introduced at later stages. Clause (3) permits amendment of list only so far as it may be necessary to give sufficient notice of the charges included in the list to the Respondent.

It was finally argued that the amendment should at any rate be allowed under the general provisions of the Civil Procedure Code (*vide* Order 6, Rule 17). But we do not consider it open to us to fall back upon these provisions, when a specific rule has been

framed on the point.

We, therefore, hold that we can only allow the Petitioners to give further particulars with respect to the specific instance of personation referred to in Paragraph (1) of the original list.

UNITED PROVINCES LEGISLATIVE COUNCIL
BAREILLY CITY (N.M.U.)

BABU CHHAIL BEHARI LAL KAPOOR (*Petitioner*)

versus

THAKUR MOTI SINGH (*Respondent*)

One *B* was proved to have canvassed for the Respondent. *B* was held to be an agent within the meaning of the term in election law.

A statement that a particular person voted or refrained from voting in a particular manner is not a statement in relation to the personal conduct and character of the said person.

The Indian voter is peculiarly susceptible to influence, and for this reason the Indian Law as to undue influence is wider than English Law. Canvassing by a chairman of a municipal board constitutes an abuse of influence.

The Commissioners were in this case of opinion that the Executive Officers of a municipal board should by rule be made to remain neutral in case of election by voters of the Municipal Area of which they are the officers.

The petitioner who claims the seat must show that but for the corrupt practices and irregularities proved in the case, he would have secured a majority of lawful votes. The petitioner does not get the seat as a matter of right after the respondent's removal therefrom.

The consent of the election agent to his appointment as such is not necessary to the validity of a nomination.

Even where no charge about the illegal hiring of a motor lorry was made in the case, the point was brought out during the course of the cross-examination of the Respondent, and on the basis of that statement a corrupt practice was held established.

One *R*, a man of considerable influence, was prosecuted by the Municipal Board of which *J*, an agent of the Respondent was the Chairman. *J* agreed to the case being withdrawn and *R* began to work for the Respondent, and even acted as his polling agent and identified voters on his behalf. The withdrawal of the case was held to be in the nature of a reward to *R* for voting and procuring votes for the Respondent, and therefore an act of bribery. The learned Commissioners remarked that direct evidence of any connection between the withdrawal of the case against *R* and the latter's voting, canvassing, and acting for respondent

would naturally not be forthcoming.

Issue No. 1—The Petitioner alleges that the nomination of the Respondent ought to have been refused on the ground that there was no evidence that his election agent had accepted the office imposed upon him. There is no force in this objection. No rule has been shown to us which would require the nomination paper to be accompanied by evidence of consent by the person appointed to serve as election agent. The wording of Rule 11(5) in Part 4 of the Electoral Rules to the effect that the nomination paper should be accompanied by a declaration in writing that the candidate has appointed or "does hereby appoint" an election agent precludes the necessity of the person so appointed expressing his consent before the nomination paper is delivered. We decide Issue No. 1 against the Petitioner.

Issue No. 2—The allegation of the Petitioner is that "with the object of inducing one Lala Ram Mohan Lal and his son Lala Brij Bhukhan Lal to vote for the Respondent, the latter, on (or about) November 30, 1923, offered a gratification to the said Ram Mohan Lal in that he told him that by using his influence with his friend Babu Jia Ram Saxena, Municipal Chairman, he would procure the withdrawal of the prosecution under Section 420|467, Indian Penal Code, which prosecution has been instituted against the said Ram Mohan Lal by the said Municipal Chairman and which was then pending in the court of the Joint Magistrate, Bareilly. In pursuance of this undertaking, Lala Ram Mohan Lal actively canvassed for the Respondent and on the polling day acted as his polling agent". Further that "on December 11, 1923, the said Babu Jia Ram Saxena (one of the most zealous agents of the Respondent) at the Respondent's instance, compromised the case and actually withdrew the above prosecution a day before the date fixed for hearing. This was done by way of reward for his vote and for his active work in furtherance of the Respondent's candidature."

Ram Mohan Lal is a well-to-do Pansari and the evidence has brought out that he has a large number of relations who are voters. On these voters he was presumably in a position to exercise some influence.

In August, 1923, a consignment of haldi was despatched to him from Aonala. This haldi was booked as harra. Mohan Lal, on August 7, paid octroi on harra instead of on haldi, thus defrauding the Municipality of Rs.31. The Executive Officer reported to the Chairman that there was a clear case of fraud and recommended prosecution under Sections 417|468, Indian Penal Code. The report shows that the case was regarded as an important one, as "underlying

it there was a regular scheme of fraud". The Chairman agreed with the Executive Officer and on October 30, 1923, requested the District Magistrate to order the prosecution of Ram Mohan, his son, and the consignor of haldi.

Ram Mohan had seen Babu Jia Ram in September and asked him to settle the matter but the Chairman refused to listen to him.

A case was instituted under Section 417|468, I. P. C., and November 30 was fixed for the first hearing. This date was subsequently altered at the request of Babu Jia Ram to December 12, and on December 4, a request to summon witnesses was presented by the Board. The election for the Council took place on December 7.

Meanwhile Ram Mohan had not relaxed his efforts to get the case settled privately. Early in December he approached Beni Prasad, the Octroi Superintendent, and the latter saw the Chairman, and Rs.400 were demanded from him by way of composition. The offence was not compoundable, but Babu Jia Ram directed that Babu Murari Lal, a municipal commissioner and the Board's legal advisor be consulted. The Executive Officer, who had taken a prominent part in the early stages and the Prosecuting Inspector whose help in the case had been specially solicited, were apparently ignored.

On December 12, an application was made by Ram Mohan countersigned by Babu Jia Ram to the Joint Magistrate for withdrawal of the case and was allowed.

In the meantime, some days prior to his interview with Babu Jia Ram, Ram Mohan had started working for Thakur Moti Singh, at the instance, it is said, of Dr. Shiam Behari Gupta, also a Municipal Commissioner and a mutual friend of the parties. On December 4, Ram Mohan was actually appointed a polling agent and accompanied the Respondent in his canvassing. On the day of the poll he identified a large number of voters among them presumably his numerous relations.

It is in evidence that it was on the eve of the poll that all the voters of Ram Mohan's mohalla decided to vote for Thakur Moti Singh. In this Ram Mohan's influence though not directly proved, may be fairly inferred.

The question is whether any connection between the withdrawal of the criminal case against Ram Mohan and the act of the latter in voting, canvassing, and working for the Respondent is proved and if so, whether such connection comes within the definition of bribery in Schedule 5, Part 1, Section 1.

Direct evidence of such connection would naturally not be forthcoming and the failure of the Petitioner to show that the

Respondent offered a gratification to Ram Mohan, by promising to use his influence to procure the withdrawal of the criminal case, need occassion no surprise. There is, however, the evidence of Lala Bhuri Mal that when Ram Mohan presented the application Ex. 4 to Babu Jia Ram, Thakur Moti Singh came with him.

But apart from this the close intimacy between Thakur Moti Singh and Babu Jia Ram—to which the former speaks and which the active part taken by Babu Jia Ram in supporting Moti Singh confirms—renders it very unlikely that Moti Singh was unaware of or did not connive at even if he did not actually procure—the favour which Babu Jia Ram was showing to a man in whom as his canvasser and polling agent Moti Singh must have had a special interest.

In any case it is clear that Babu Jia Ram was an agent for Thakur Moti Singh in connection with the election (Rule 30(*a*)). If then the withdrawal of the criminal case pending against Ram Mohan was in the nature of bribery as defined in Schedule 5 an offence under Part 1 of that schedule would be established.

(Evidence Discussed)

We are satisfied that in Ram Mohan's case the withdrawal of of the criminal case must be held to be the receipt of a reward for voting and procuring votes for Thakur Moti Singh and therefore an act of bribery as defined in Part 1, (Section 3) of Schedule 5.

Issue No. 3—The Petitioner's case is set out as follows: "That with the object of inducing Mahtab Rai, Municipal Engineer to vote for him, and to generally procure for him the votes of other voters amenable to his influence, the Respondent, about the middle of November, 1923, promised to use his influence as a municipal member for securing recision of the Municipal Board's resolution whereby several months before the said Board had resolved to abolish his post. Accordingly the said Mr. Mahtab Rai very zealously canvassed for the Respondent, both on the polling day and on the day preceding thereto.

The evidence has not satisfied us that the Respondent made any promise to Mahtab Rai. We therefore find the charge not proved as against the Respondent. But we consider that there was receipt by Mahtab Rai of a reward for his service in canvassing for Thakur Moti Singh which brings him within the meaning of Section 3 of Part 2 of Schedule 5.

On June 5, the Municipal Board unanimously accepted a proposal made by a retrenchment committee that the services of Mahtab Rai be dispensed with and three months' notice was given to him.

A fortnight before the polling day Mahtab Rai began to can-

vass for Thakur Moti Singh and says he may have canvassed about 50 votes.

On November 15, the Municipal Board had before it the revised budget, but for reasons which are not apparent from the minutes decided to postpone its consideration till December 10. At the adjourned meeting, which took place on December 17, instead of the 10th, the Board executed a complete volte face and cancelled all the retrenchment unanimously passed in June. The effect of the resolution was to reinstate Mahtab Rai.

It is not, in our opinion, possible to hold that Mahtab Rai had supported Moti Singh from motives unconnected with the hope of favours to come. Nor can we, when we consider the strange coincidence of time between the canvassing of Mahtab Rai and his reinstatement, avoid the conclusion that the conduct of the Municipal Board guided by their Chairman and his Swarajist colleagues, of whom the Respondent was one, was calculated to encourage these hopes.

Mahtab Rai's influence in Bareilly was not confined to what was derived from his private social status. His position as Municipal Engineer, whose duty it was to receive and report on all building applications, was one of considerable power. In our view the influence that the Executive Officials such as a municipal engineer are in a position to exercise on voters cannot by any stretch of imagination be called legitimate, and we suggest that they should be forbidden to canvass or work for a candidate at any election—whether to the Municipal Board or to the Legislative Council. The mere fact of their doing this is bound to exercise an influence on voters which, in the present conditions of Indian life, is reasonably calculated to interefere with the free exercise of their electoral rights.

Issue No. 4—There is in Bareilly a class of workers in wood and iron who are known as Maithals. These people for some years have objected to their being classed among Barhais as Sudras and claim to be recognised as Brahmans; but this claim is not accepted by the Brahmans. Saligram (Petitioner's witness No. 17) is President and Bhawani Prasad (P. W. 16) is Secretary of the Maithal Brahman Sabha. Naubat Ram (P. W. 14) is a member of that Sabha. It appears that the Maithal community looked upon the election as an opportunity for their advancement in the social scale.

Naubat Ram states that a meeting of the Sabha held on November 16, 1923, it was agreed that as Maithals had been described as Barhais in the Electoral Rolls they would not vote for either candidate. He adds that it was understood that if either candidate should get their caste corrected in the Electoral Roll they would vote for

that candidate. He further says that at a meeting on December 2 the Sabha decided that its members should vote for the Petitioner as he was the first to get them described as Brahmans.

Ram Lochan Shastri is the president of the local Sanatan Dharma Sabha. Salig Ram states that Ram Lochan Shastri asked him to vote for the Respondent. He replied that the Maithals would not vote, as they had been described as Barhais in the Electoral Roll. In the course of this conversation, which took place the day before the poll, Ram Lochan also said that if the Maithals did not vote for Thakur Moti Singh he would publicly proclaim that they were Sudras. Inspite of this talk Salig Ram voted for the Petitioner. Naubat Ram states that Ram Lochan on the evening of November 6 told him that as he was the president of the Brahman Sabha he could raise the Maithals to the status of Brahmans, and asked the witness to vote and canvass his caste-fellows for Thakur Moti Singh, adding that if he did not do so he (Ram Lochan) would publicly proclaim that Maithal were Sudras. On the morning of the polling day Ram Lochan repeated this threat, but inspite of it the witness voted for the Petitioner, though some of his caste-fellows did not.

Bhawani Prasad says that Ram Lochan Shastri had canvassed many of his caste-fellows. At the E. I. M. School polling station Ram Lochan told him that the Maithal voters of Jagatpore would not vote until they got orders from the witness and threatening in the alternative to proclaim that they were not Brahmans, asked him to tell them to vote for the Respondent. In consequence of this threat the witness says his father did not vote.

Each of the three witnesses tells of a separate incident, and in no case is their evidence corroborated. The story they tell are not in themselves improbable, and all these witnesses came well out of cross-examination. There are no Maithal witnesses on the other side.

The allegations are met by Ram Lochan Shastri with a flat denial.

It is proved that Ram Lochan took an active part in canvassing for the Respondent. The Respondent did not repudiate these services and Ram Lochan Shastri must therefore be regarded as his agent.

We, therefore, hold that Ram Lochan Shastri as agent of Thakur Moti Singh was guilty of an attempt to interefere with the free exercise of their Electoral rights by the Maithal voters. This amounts to undue influence as defined in Schedule 5-1, Rule 2 of the Electoral Rules.

Issue No. 5—We find it proved that Sham Lal did note as

voter No. 3464 and that his application for a voting paper was procured through the agency of Badri, who is shown to have canvassed for the Respondent and must therefore be regarded as his agent. Sham Lal cannot identify the man who took him into the polling room but it is clear that his application for a voting paper was abetted by the partisans of Moti Singh who were at the Respondent's bister and who must therefore be regarded as the agents of the Respondent.

We find that the Respondent committed the corrupt practice of personation under Schedule 5, Part 1, Rule 3 in respect of Sham Lal through his agent Badri and other agents unknown.

Issue Nos. 6 and 7—The statements which are alleged by the Petitioner to fall under Schedule 5, Part 1, Rule 4 are contained in Annexures A and B attached to the petition.

In these statements it is said that the Petitioner took no steps to combat the alleged oppressive measures of the Government. For the Petitioner it is urged that these statements cast an imputation on his patriotism and so reflected on his personal character and conduct.

We are unable to accept this view. We hold that the Respondent in publishing these statements did not exceed the bounds of legitimate criticism of the Petitioner's political conduct and that the statements did not affect his personal conduct and character and that they are of kind to which no candidate could seriously object. In this connection we would express our agreement with the views of the Madras Election Commissioners in the case of Kumaran Raman *alias* Kavalappara Mooppil Nayar *versus* K. Sadasiva Bhat, who held that all comment that a man voted in particular manner is a comment as to his political conduct and not as to his personal conduct. The same principal may be applied to a man's silence or failure to vote.

Issue No. 9—The statement alleged to have been made by the Petitioner is as follows:

"Babu Chhail Behari Kapoor ne ap logon ko sarkar men Barhais darj kara diya hai".

It is not proved that the Respondent made the statement complained off.

Issue No. 10—Although no charge was made to this effect in the petition and consequently no issue was framed on it, it has been brought out in the cross-examination of Thakur Moti Singh and in the evidence of Sayid Ainuddin that on the polling day a motor lorry was used to carry the Respondents' voters to the polling place. This lorry was used to ply for hire between the city and Kavhari. The Respondent was unable to say who paid for the petrol.

The cost of the petrol is not shown in the election expenses.

The hiring, employment, borrowing, or using for the purposes of an election of any vehicle, etc., usually kept for the conveyance of passengers by hire is a corrupt practice under Rule 5, Part 2, Schedule 5 of the Electoral Rules.

We find that Thakur Moti Singh was guilty of such a corrupt practice in respect to the incident noted above.

Issue No. 11—The gist of Paragraph 12 of the petition on which this issue is based is that the canvassing of certain Municipal officials for the Respondent and the employment of others is his helpers on the polling day produced an impression on the minds of Municipal employees in general that it would be to their advantage to vote for the Respondent, i.e., the exercise of their franchise was not free.

The allegation of the Petitioner, which the Respondent has been at pains to controvert, and which indeed is hinted at in the petition, is that the utilisation of Municipal servants to canvass and work on the polling day for the Respondent and the active participation of the Chairman in the election have directly or indirectly influenced the voters and prevented a free election.

The evidence discloses the following facts:—

Babu Jia Ram, the Chairman of the Municipal Board, was an enthusiastic supporter of the Respondent. He canvassed for him, spoke at election meetings for him, and on the election day was present at the Town Hall polling station more or less continuously from 10 o'clock till 4 o'clock taking an active interest in the voting and sending messengers to fetch voters.

Babu Mahtab Rai, the Municipal Engineer, as set out under Issue 3, canvassed for the Respondent and also worked for him on the polling day.

Municipal School teachers were employed to work for the Respondent at the polling stations and were apparently utilised for fetching voters to record their votes.

At the Town Hall, Dhanarja Prasad, the Head Master of the Teachers Training School, says that he saw 20-25 teachers working for Moti Singh. Lala Bhurimal saw the same number of Municipal employees at the Qila Polling Station "doing odd jobs for the Respondent". Pandit Ram Lochan Shastri, a teacher in the E. I. M. School, of which the Respondent is the manager, used his religious influence, as has been shown in Issue 4, with a view to persuading voters of a certain caste to vote for the Respondent.

To take first the case of Municipal employees themselves.

Thakur Moti Singh has admitted that "the Congress party has generally the predominating influence in the Bareilly Muni-

cipal Board." The Chairman and the Vice-Chairman are president and members respectively of the local branch of the Swaraj party of which the Respondent was the nominee. The Respondent himself is the Chairman of the Municipal Advisory Committee. Clearly then it was to the interest of Municipal Officials to help Moti Singh. It is quite possible that those who worked for the Respondent may have done so willingly on that account, but they could not have worked without Moti Singh's invitation or convenience. Thakur Moti Singh is manager of the E. I. M. Municipal School and the Chairman of the Municipal Education Committee and is also a Swarajist. The whole-sale employment of Municipal school teachers in Moti Singh's election work on December 7 is therefore not without significance.

Moreover, special circumstances existed which must have had a powerful influence on the minds of Municipal school teachers. The resolution of the Municipal Board of June 5, 1923, had reduced by half the increments allowed to the staff of the W. I. M. and E. I. M. schools whose pay exceeded Rs.40. This resolution was followed by numerous representations which were considered by a Revision Committee and rejected by the Board on October 1. The agitation however continued and the matter would presumably have come up when the revised budget was up before the Board on November 15, 1923. But the consideration of that budget was postponed from November 15 to December 10, significant dates—and then on December 17 the resolution of June 5 was reversed. It is difficult to believe that these tactics had no influence on the Municipal employees affected, and it is, we think, a legitimate inference that they were not in a position to exercise their franchise with freedom and independence when the question of the restoration of their allowance was being held over them. The interference with the free exercise of their Electoral Rights may not have been direct, but it assuredly was such indirect interference as is contemplated by Section 2, Part 1 of Schedule 5.

The same view must be taken in regard to the general voter. "The law cannot strike at the existence of influence it is the abuse of influence with which alone law can deal." (Willes, J. quoted in Hammond's Indian Candidate and Returning Officer, 1923 Edition, page 143).

The Indian voter is peculiarly susceptible to influence and it is doubtless for this reason that the Indian Law as undue influence is wider than the English Law. Until the Indian electorate is more educated this distinction must be maintained and enforced. The Chairman of a municipal board must inevitably be a man of in-

fluence. He is invested with extensive executive powers affecting a large population. In fact the influence of a municipal chairman in an election for the representation of an urban area must be, if not greater, at least as great as that of the Collector, who is forbidden to take any part in elections. We consider that he should be excluded from canvassing and playing the part of an agent at the poll for any candidate. Such participation constitutes in our opinion an abuse of influence. Should he be standing as a candidate himself he should be precluded from using as agents or canvassers the officials under his control. We think therefore that Babu Jia Ram's conduct in this election was open to criticism as interfering indirectly with the free exercise of Electoral rights. We have said in discussing the case of Babu Mahtab Rai, our view is that neutrality should be imposed on all executive officials of a municipal board in an election for the representation of the area over which their powers extend. This principle has been recognised in the case of Government servants. We consider that it should be extended to Municipal and District Board servants. We are unable to hold that the election of December 7 in Bareilly for the local Legislative Council was a free one. We find that Rule 44(1) (*d*) is applicable and that the election must be declared void under that rule.

We recommend that the election of Thakur Moti Singh is void.

Costs of the Petitioner assessed at Rs.593 to be paid by the Respondent.

Under the proviso to Rule 47 we called upon Babu Jia Ram Saxena, Babu Mahtab Rai, Lala Ram Mohan Lal, Pandit Ram Lochan Shastri and Badri to show why they should not be named in our report as having committed corrupt practices and they have appeared before us. Their explanations have not led us to change our views we have expressed in regard to their conduct. In view however of the fact that Electoral practice is in its infancy in this country and that no definite rule exists prohibiting the Chairman or Executive officials of a municipal board from actively supporting a particular candidate at an election, we consider that no stigma attaches to Babu Jia Ram Saxena and recommend that he be exempted from any disqualification he may have incurred under the Electoral Rules. We recommend similar indulgence in the case of Babu Mahtab Rai and Pandit Ram Lochan Shastri.

RECRIMINATORY PETITION

After discussing the evidence the learned Commissioners said "the result is that the recriminatory petition fails."

This being so and Babu Chhail Behari having established that

the election was not a free one, it becomes a question whether the Petitioner who claimed the seat for himself should be declared duly elected. It is urged on us that this follows as a matter of course. We are not prepared to accept this contention. In fact its acceptance might lead to an obvious absurdity in such cases where the Petitioner is defeated by an overwhelming majority of votes and cannot therefore be said to represent his constituency. In this connection our attention has been drawn to the report of the Election Commissioners in Election case No. 3 of 1924 printed at page 883 of the Calcutta Gazette, Part 1 of April 30, 1924. We agree with the Commissioners in their view that Rule 34 might be amended so as to afford some guidance to Petitioners as to circumstances in which such a claim is proper. A Petitioner who claims the seat himself should, we consider, be prepared to show that but for the acts of the Respondent he would have received a majority of the votes recorded.

In the present case the number of votes cast for Babu Chhail Behari Lal was only 900 as against 1,450 cast for Thakur Moti Singh. It has not been shown to us how many votes were lost to the Petitioner through the election not being a free one, and we are not prepared to hold that but for the existence of undue influence Babu Chhail Behari would have been returned.

We are therefore of opinion that Babu Chhail Behari Lal is not entitled to be declared duly elected and that there should be a fresh election.

We further direct that Thakur Moti Singh be directed to pay Babu Chhail Behari Kapoor Rs.100 as costs in respect of recriminatory petition.

H. NELSON WRIGHT
V. E. G. HUSSEY
G. C. BADHWAR

UNITED PROVINCES LEGISLATIVE COUNCIL
BAREILLY CITY N.M.U. (2ND CASE OF THIS NAME)

LALA NANHE MAL (*Petitioner*)

versus

CHOUDHRI JAI NARAIN (*Respondent*)

The rule requiring that the counting of votes should be done in the presence of the Returning Officer, is sufficiently complied with when the counting is done under the supervision of the Returning Officer sufficient in the circumstances of the case, to eliminate so far as possible the chances of mistaken or false declaration of result.

A recount will only be allowed in cases which are substantiated by reliable prima facie evidence.

One *R* voted at an election as a certain voter entered in the electoral roll: it was however proved that the entry in the electoral roll did not refer to him, but it was not shown that R did not honestly believe that the entry referred to him, and he was not entitled to vote. On the other hand it was proved that *R* honestly believed that he was entitled to vote. Held that a corrupt motive being absent, the corrupt practice of personation was not established.

A bye-election for this constituency was held on August 18, 1924, with the result that of the two rival candidates, Choudhri Jai Narain and Babu Kali Charan, the former was declared elected by a majority of 139 votes. The election has again been called in question by one Nanhe Mal, an elector of the constituency.

We frame the following issues:—

1. (*a*) Did the Returning Officer fail to comply with the rule relating to the manner of counting of votes?

(*b*) If so, did it result in a wrong declaration of majority in favour of the Respondent?

(*c*) Is a recount necessary?

2. Was an application made for a voting paper at the Government High School by Radha Kishen, son of Jugul Kishore in the name of Radhe Lal, son of Chhote Lal, voter No. 4121? If so, was it with the connivance of the Respondent's agent?

Issue No. 1—The Returning Officer was the Collector of the district and the counting of votes was done partly in his court room and partly in an adjoining retiring room. We made an inspection of these rooms and found that they were situated one behind the other with a door of communication in between. The door was admittedly open all the time that the counting was in progress. The Returning Officer occupied a chair on the dias quite close to the communication door, so that he could have a clear view of what was happening in both rooms. The argument on behalf of the Petitioner is that under the circumstances mentioned above the counting of votes was not done under the supervision of the Returning Officer as contemplated in Sub-rule (6) of Rule 14 of the Electoral Rules. It was contended that in order to satisfy the requirements of the rule just mentioned it was necessary for the Returning Officer to have every ballot box opened and papers contained in is sorted and counted in his immediate presence. If this contention is accepted, the Returning Officer would be precluded from taking any assistance. All that the said rule demands, in our opinion, is that the supervision of the Returning Officer should be sufficient to eliminate, as far as possible, all chances of a mistaken or false decla-

ration of the result. This demand, we think, was fully satisfied by the conditions mentioned above, under which ballot papers were counted in the present case.

The only other point that has to be decided in connection with this issue is whether the Petitioner is entitled to a recount, and we have no doubt that the answer must be in the negative. We fully agree with the view taken by the Election Commissioners in the Tanjore case, reported in Hammond's Indian Election Petitions, Volume 1, that "a recount will only be granted in cases which are substantiated by specific instances and by reliable prima facie evidence." It cannot even be pretended in the present case that these conditions are present in the present case. We, therefore, decide this issue against the Petitioner.

Issue No. 2—The Petitioner's case is that a person named Radha Kishen, son of Jugul Kishore, Khandelwal by caste, and a resident of Alamgiriganj, whose name is not recorded in the voter's list, personated one Radhe Lal (No. 4121), son of Chhote Lal, Agrawala by caste, and a resident of Nayatola, with the connivance of the Respondent's agents and thus obtained a ballot paper to which he was not entitled. (The learned Commissioners discussed the evidence at length). We can only repeat that, after a consideration of all the points that arise in the case, we are convinced that in applying for a voting paper, Radha Kishen had no corrupt motive but that he shared with the Respondent's agents the belief that he was entitled to vote. We, therefore, decide this point against the Petitioner.

Dismissal of the petition recommended. Petitioner to pay Respondent's costs which were assessed at Rs.727-12-0.

H. NELSON WRIGHT
G. C. BADHWAR
TEJ NARAIN MULLA

UNITED PROVINCES LEGISLATIVE COUNCIL
BAREILLY DISTRICT (N.M.R.)

PANDIT RAM SARUP (*Petitioner*)

versus

1. KUNWAR DHANKAN LAL
2. BABU MADAN MOHAN BHATNAGAR } (*Respondents*)

The non-publication of the Petitioner's name in the Government Gazette among the nominated candidates, which was not read by a very large majority of electors was held to be a merely technical non-compliance with the regulations, and did not avoid the election.

The statement that the Respondent voted in the council in favour of cow-slaughter does not relate to the personal conduct and character of the candidate as distinguished from his political position, reputation or action.

For election to the United Provinces Legislative Council in December, 1924, three candidates went to the poll from the Bareilly District N.M.R. Constituency, viz., Lieut. Raja Kali Charan Misra, Kunwar Dhankan Lal and Babu Madan Mohan Bhatnagar. Kunwar Dhankan Lal who obtained a majority of less than 200 votes was declared duly elected. Pandit Ram Sarup, an elector of the said constituency, has by an election petition called in question the election of Kunwar Dhankan Lal.

Issue No. 1—Regulation 11(2) requires the publication of the name of the nominated candidates in the Government Gazette and in such other places in the constituency as the Returning Officer may consider necessary. It is true that the name of Respondent No. 2 did not appear in the U. P. Gazette but his candidature was notified by the Returning Officer by sending out notices to the tahsils and polling stations. Respondent No. 2's name was also published in the Leader of November 12, though his constituency was therein incorrectly described as Non-Muslim Urban Constituency. He himself issued about 4,000 posters and his agents went on working for him in his constituency till the date of the election. There was no vernacular edition of the Government Gazette at the time and the English edition is rarely seen in rural areas.

It may be noted that the names of all the three candidates appeared in the ballot papers. The Petitioner has failed to show to what extent, if at all, the omissions to publish the names of Respondent No. 2 in the Government Gazette affected the result of the election. We hold that the result of the election was not materially affected by the non-publication of the name of Babu Madan Mohan Bhatnagar as a nominated candidate in the Govenment Gazette and that the election of Respondent No. 1 cannot be held to be void on account of a merely technical non-compliance with the regulation. The same principle was laid down in Woodward *v.* Sarsons, L. R., C. P. 746.

Issue No. 5—It is alleged in Paragraph D of the list of corrupt practices attached to the petition that on November 19, 1923, Khiyali Ram, the mukhtar-am of Respondent No. 1, in a speech at the market place of village Gauri, tahsil Baheri, made the statement that inspite of being a Brahman, Raja Kali Charan had cast his vote in favour of cow-slaughter. We find it not proved that the agent of Respondent No. 1 published the false statement that the Raja voted in Council in favour of cow-slaughter. Nor would

such a statement, even if made, in our opinion fall within the per-view of Schedule 5, Part 1, Sub-clause 4, inasmuch as it does not relate to the personal conduct or character of the candidate as distinguished from his political position, reputation, or action. We follow in this respect the finding in Election Petition 3 from the West Coast and Nilgiris Constituency (Kumaran Ram alias Kavalappara Mooppil Nayar versus Sadasiva Bhat.).

We recommend to H. E. the Governor that the petition of Pandit Ram Sarup be dismissed and that he be ordered to pay the Respondent No. 1's costs which we assess at Rs.1,221-10-0.

H. NELSON WRIGHT
V. E. G. HUSSEY
G. C. BADHWAR

BOMBAY LEGISLATIVE COUNCIL
BELGAUN DISTRICT (N.M.R.)

C. M. KARALE (*Petitioner*)

versus

1. B. K. DALVAI
2. S. N. ANGADI } *Respondents*

Nomination is one of the earliest stages of election, and none of the grounds of ineligibility for election should exist on the date of nomination to make the election of the candidate subject to such disability valid.

A member of the Legislative Assembly is ineligible for being nominated for membership of Bombay Legislative Council, and the acceptance of his nomination paper by the Returning Officer is a material irregularity.

There is a difference between the English Ballot Act and Rule 42 of the Bombay Election Rules. According to the latter no election is to be declared invalid by reason of non-compliance with the rules if it appears that the non-compliance did not affect the result of the election.

There is a distinction between the case of an improper rejection of a nomination paper by the Returning Officer and that of its improper acceptance. In the former case, the electorates deprived of its right to vote for a candidate who was legally entitled to stand, in the latter case every one in the constituency gets an opportunity of voting for the candidate he prefers.

When the disqualification of a candidate is a patent one, evidence would not be permitted to be given to show that one or the other of the candidates would have got the disqualified candidate's votes.

The votes cast in favour of a disqualified candidate with the knowledge of the fact on which the disqualification is based, must be considered as

thrown away. This knowledge must be established either by direct notice or by notoriety, and it will, in all cases be inferred that where the voter is aware of the facts, he is aware of the legal deductions from those facts, however intricate and doubtful such deductions may be.

The Petitioner Karale is a registered voter on the Electoral Roll for the Non-Muhammadan Rural Constituency of the Belgaun District. The following issues were framed:—

1. Has there been an improper acceptance of the nomination paper of Mr. Lathe?

2. If so, has the result of the election been materially affected by such acceptance?

Issue No. 1—The Commissioners find that Mr. Lathe was a member of the Legislative Assembly on September 4, 1923, the date fixed for nominating candidates for election to the Bombay Legislative Council, and that the said Assembly was not dissolved till September 12, 1923, so he was clearly ineligible under Clause (*c*) of Sub-rule (1) of Rule 5, Part 2, of the Electoral Rules. This objection to the nomination paper was taken by one of the returned candidates Mr. Angadi (Respondent No. 2) before the Returning Officer on September 6, the day of scrutiny of nomination papers, but it was disallowed by the Returning Officer.

It was contended by Respondent No. 2 that Rule 5 contemplates ineligibility for election, and that nomination was good as the invalidity was cured before the actual election. But there can be no doubt that that nomination is one of the earliest stages of election, and that none of the grounds for ineligibility should be in existence on the day announced by Government for the nomination of candidates.

The Commissioners think it desirable to note that, particularly in view of some of the cases cited before them, that the present is not a case of the improper refusal of a nomination paper, but of its improper acceptance. The distinction between the two cases is obvious; in the one case the whole electorate is deprived of its rights to vote for a candidate who was legally entitled to stand; in the other all the candidates including a disqualified one are put up for election and every one on the Electoral Roll of the constituency had the opportunity of voting for the candidate or candidates he prefers. In this case with the names of four candidates before them the electors have exercised their right to franchise in favour of one or more of them (there were four candidates for election). The votes given to Mr. Lathe might have been given to Mr. Chikodi, if Mr. Lathe's nomination had not been accepted by the Returning Officer, but on the other hand they might have been given to either of the two returned candidates.

Under the circumstances the Commissioners think that the onus rests very heavily on the Petitioner of proving by affirmative evidence that all or a large number of Mr. Lathe's votes would have come to Mr. Chikodi, if the former had not been in the field. How has the Petitioner attempted to discharge this onus? The Commissioners are of opinion that he has entirely failed to do so.

It was contended on behalf of the Petitioner that when votes to the tune of nearly 5,000 were wasted, and the difference between Mr. Chikodi and the second returned candidate Mr. Angadi was only 481, it should be presumed that Mr. Chikodi would have been able to get more than that number and that this was enough to shift the onus on to the Respondents of proving that the result of the election was not materially affected; and some cases were cited on that point. It may well be pointed out that there seems to be a material difference in the phraseology of Rule 42 of the Electoral Rules and Section 13 of the Ballot Act of England. According to the latter no election is to be declared invalid by reason of non-compliance with the rules, if it appears to the Tribunal having cognizance of the question that such non-compliance did not affect the result of the election; while under Rule 42 of the Election Rules, the Petitioner must satisfy the Tribunal that the result of the election was as a fact materially affected, not merely that it might have been affected.

A majority of the Commissioners are inclined to hold that it would not be proper even to allow evidence to be adduced by the Petitioner or anybody else to show that one or other of the candidates would have got Mr. Lathe's votes or any portion of them. They think that Mr. Lathe's disqualification was a patent fact of which the electorate must be held in law to have been aware. The electors were aware that Mr. Lathe was a member of the Legislative Assembly. He drew attention to the fact in his election address. He did not claim in his address that he had ceased to be a member of the Legislative Assembly. In support of this view the Commissioners would refer to the practice of the parliamentry committee which is stated in Halsbury Volume 12, at page 306 *vide* at the end of note (1):—

"By the Common Law the principle seems to be firmly established that where a candidate is in point of fact disqualified at the time of election, all votes given for him with the knowledge of the fact upon which such disqualification is founded must be considered as thrown away. This knowledge may be established either by distinct notice or by notoriety, and it will, in all cases, be inferred that where the voter is aware of the facts he is aware of the legal deductions from those facts, however intricate and

doubtful such deductions may be."

Costs follow the result. The Petitioner must bear his own costs and pay those of the Respondents and those of Government in setting up the Tribunal and all costs incidental thereto.

M. B. CHAUBAL
C. E. PALMER
P. B. SHINGNE

INDIAN LEGISLATIVE ASSEMBLY
BENGAL MARWARI ASSOCIATION

RAI BAHADUR BISHESHWARLAL HALWASYA
(*Petitioner*)

versus

BABU RANG LAL JAJODIA (*Respondent*)

There is nothing in electoral rules and regulations which bars a Returning Officer from standing as a candidate.

Firms cannot be entered on the electoral roll as voters or stand as candidates. It must be a natural person representing the firm who can be on the electoral roll or who can exercise the right to vote or to nominate, and the candidates for election must be natural persons.

The election court cannot go behind the electoral roll in considering the qualification of voters who are on the roll. It is however open to the court and it is the function of the court to see whether disenfranchisement would occur in cases of persons prohibited from voting by statute.

A member of an association may resign at any time and he ceases to be a member after the submission of his resignation.

The Bengal Marwari Association of Calcutta, and Indian Commerce Special Constituency was called upon to elect a member to the Legislative Assembly. October 8, 1923, was fixed as the date for the nomination of candidates, and October 11, 1923, as the date for the scrutiny of the nominations of the said Constituency. Babu Rang Lal Jajodia was the Joint Secretary of the Marwari Association. The Joint Secretary of the Marwari Association was specified in the third column of Schedule 1 of the Bengal Legislative Assembly Regulations as the Returning Officer. The Personal Assistant to Secretary, Bengal Marwari Association, was specified in the third column of Schedule 1 as the person authorised to perform all or any of the functions of the Returning Officer.

It appears that Babu Rang Lal Jajodia was also the registering authority and the Electoral Rolls were originally prepared by him. In the Marwari Association, firms and companies are members, and many of them were put on the Electoral Roll. Apparently about two-thirds of the names, roughly speaking, on the rolls are those of firms, while the remaining names are those of individuals. On October 7 Babu Rang Lal Jajodia resigned his office as Joint Secretary of the Marwari Association. He sent also a telegram to the Government of Bengal resigning his office as Returning Officer. On October 8 there were only two candidates, the Petitioner and the Respondent Babu Rang Lal Jajodia. The nomination papers were received by the Personal Assistant to the Secretary. The nomination paper of the Petitioner Rai Bahadur Bisheshwarlal Halwasya was subscribed by himself. The proposer and seconder were however two firms whose names appear on the Electoral Roll, viz., Messrs. Hurmukharai Sanairam and Messrs. Shewdayal and Ramjedas. The senior partners of these firms signed the names of the firms on the nomination paper. On the 11th—the date of the scrutiny—objection was raised by the Respondent that the Petitioner's nomination was bad inasmuch as the nomination paper had been subscribed by two firms and not by individuals as proposer and seconder. The Petitioner in his turn challenged the nomination of the Respondent on the ground that, the latter himself being the Returning Officer of the constituency, he was not eligible to stand as a candidate. Babu Jatindra Nath Banerji, the Personal Assistant to the Secretary Marwari Association, overruled the objection of the Petitioner and upheld the objection of the Respondent, and he declared Babu Rang Lal Jajodia as duly elected from the constituency. The Petitioner thereafter filed his present application. His contention is that firms can be electors and can vote, and firms can nominate a candidate for election. It is also pleaded that the Respondent was not entitled to resign his office and stand as a candidate. It is further contended that if he could and did resign, the constituency was without a Returning Officer and therefore Babu Jatindra Nath Banerji acted without jurisdiction. It is pointed out that the Bengal Government had no authority in this election matter and the telegram to the Government of Bengal is of no value. It is shown that the office of the Returning Officer was not filled up by the Government of India till October 27, 1923. It was stated that the office of the Joint Secretary of the Marwari Association has not yet been filled up.

Issue No. 1—Upto what date was Rang Lal Jajodia a Returning Officer?

Issue No. 2—Can a Returning Officer be a candidate for

election?

Issue No. 3—If there was no Returning Officer after October 7, what was the effect on the election proceedings?

Issue No. 4—Was the nomination paper of the Petitioner in order?

Issue No. 1—It was urged that the Marwari Association had not accepted the resignation of Babu Rang Lal Jajodia. It does not seem that the acceptance of resignation is necessary. Subject to any provisions in the rules to the contrary, a member may resign at any time and he ceases to be a member (Halsbury, Volume 4, page 414) (1896, 1 Chancery, page 409). Questions may arise about his liablity but that is a different matter. It is not shown that there is anything in the rules of the Marwari Association which prevented the Respondent from resigning his office as Joint Secretary. He was appointed Returning Officer not by name but by virtue of his office. Our conclusion therefore is that Babu Rang Lal Jajodia ceased to be a Returning Officer after October 7.

Issue No. 2—There is nothing in our Electoral Rules and Regulations which bars a Returning Officer from standing as a candidate. The matter has been placed on a statutory basis in England and perhaps this should be done in India. The rule is that when a Returning Officer stands as a candidate he must refrain from doing anything in such capacity. It is not said that the Respondent did any act as Returning Officer after his resignation. It may be said that he should have resigned before. Parker at page 6, summarises the English Law—"If all the duties of Returning Officer are discharged by the acting Returning Officer the former is not disqualified from being a candidate by reason of being a Returning Officer. Our answer therefore is in the affirmative.

Issue No. 3—There was no Returning Officer on October 8, 1923, in this constituency. Under Schedule 1 of the Regulations however Jatindra Nath Banerji was empowered to do all the duties of the Returning Officer. It is pointed out that under Regulation 3 he could only act under the control of the Returning Officer and that he could not receive nomination papers and hold a scrutiny unless the Returning Officer was 'unavoidably prevented' from performing these functions. The words in an English case were "incapable of acting" and Lord Campbell thought that they might cover a case of this kind. (Queen *v.* Owens, volume 121, English Reports, page 36). The Personal Assistant had not usurped the office. He took up his duties when the Returning Officer became incapable of acting. "Want of title in the person acting as Returning Officer will not vitiate an election which is otherwise valid (Parker page 61)." "Elections made under usurping Retur-

ning Officers when there has been the form of an election have been uniformily supported" (Heyw Bo, 62). Turning to the Bengal Electoral Rules it would appear that non-compliance with rules and regulations is not enough. The Petitioner has to show that the result of the election has been materially affected by such non-compliance. If the Petitioner's nomination was bad, his name goes out on that ground. If the nomination was good, he succeeds on that ground and not by reason of the fact that the Personal Assistant acted as the Returning Officer. We therefore hold that the Petitioner cannot succeed on this ground.

Issue No.5—It is necessary to decide whether firms can be registered on the Electoral Roll at all.

A similar question was raised in the Election Petition of Babu Amulyadhone Addy against the election of Mr. Byomkesh Chakravarty from the Bengal National Chamber of Commerce Special Constituency to the Bengal Legislative Council (Page 38 *infra*).

We are of opinion that the Legislature laid it down how the firm can be represented on the Electoral Roll, viz., by a partner, member of the firm, director and so on. It was argued that firms are members of the Marwari Association and that Schedule 2, paragraph 2 does not exclude firms. We must however read Schedule 2 along with the other rules and they clearly lay down that it must be a natural person representing the firm who can be on the Electoral Roll or who can exercise the right to vote and to nominate. The disqualifications mentioned in Rule 7 can be predicated only of a natural person and Rule 7 governs Rule 8(2). The learned vakil for petitioner is forced to concede that the candidate for election must be a natural person seeing that he must give his own name and his father's name and state his age and when elected he must take the oath. The cases of elector and the proposer and seconder stand on the same footing. We think that the word "person" has the same meaning in all these rules and regulations and that it means a natural person. Rule 11(4) lays down that "any person whose name is registered in the Electoral Roll of the constituency and who is not subject to any disability stated in Rule 7 may subscribe as proposer and seconder ". In the present case the proposer and seconder were firms. We hold that they must be natural persons. The nomination paper of the Petitioner was not in order and we think it was rightly rejected.

The learned vakil contended that the Electoral Roll was final not only for the Returning Officer but also for this court and he referred to Regulation 20(2), and to the case of Stowe *v.* Jollife. The last case merely is an authority for the proposition that the election court cannot go behind the Electoral Roll in considering

the qualifications. It is open to the court and it is the function of the court to see whether disfranchisement could occur in the cases of persons prohibited from voting, etc., by statute. Regulation 20(2) (*a*) is explicit and we have still to see whether the proposer and seconder is disqualified under Sub-rule (4) of Rule 11. To say that we are concluded by Regulation 20 is simply to beg the question as to whether a firm is an elector.

Petition dismissed. As Respondent was the registering officer in this constituency and as it was at the last moment that he resigned his office and stood as a candidate objecting to the Petitioner's nomination, we recommend that the parties should bear their own costs.

SARODA PRASAD BAKHSHI
G. B. MUMFORD
G. N. ROY

BENGAL LEGISLATIVE COUNCIL
BENGAL NATIONAL CHAMBER OF COMMERCE

AMULYADHONE ADDY (*Petitioner*)

versus

1. MR. BYOMKESH CHAKRAVARTY
2. RAJA RESHEE CASE LAW, C.I.E.
3. MR. MURALI DHAR ROY

} (*Respondents*)

Firms and companies cannot be put on the electoral roll, nor can they stand as candidates at an election. They must exercise their franchise through natural persons.

To entitle a person to be entered the mere possession of requisite qualifications is not enough. He must have the requisite qualifications and must not be subject to disabilities of minority, lunacy and so on.

The business of courts is to construe law and they should not listen to the argument that a particular view will cause hardship. They must look hardship in the face rather than break rules of law.

A person whose name is on the electoral roll can be nominated for election, and if nominated and elected, the election would be void even if no objection to the nomination was made before the returning officer. There is no waiver and no estoppel, and the objection can be made at the time of the filing of the petition.

It is an accepted cannon of construction that unless there is something in the context to the contrary, the same word has the same meaning.

It appears that a number of firms are members of the Bengal National Chamber of Commerce. When the Electoral Roll of this constituency was prepared, 118 firms or companies were placed on the roll. Sixty-two persons were entered by their names as electors. There were four candidates. Mr. Byomkesh Chakravarty and Raja Reshee Case Law obtained a majority of votes and were declared elected. The Petitioner was an unsuccessful candidate.

The main contention is that Mr. Chakravarti is not entitled to be a candidate by reason of the fact that his name does not appear on the Electoral Roll. The Petitioner also pleaded that firms and companies are not entitled to be registered as electors in the Electoral Roll, and all votes purporting to have been exercised on their behalf ought to be rejected. The reply of Mr. Chakravarty is that the petition is out of time, that the Petitioner, not having objected to his nomination at the scrutiny of the nomination papers, has waived his right to question the nomination and the election, that the Bengal National Bank, Limited, is an ordinary member of the constituency known as the Bengal National Chamber of Commerce Constituency and is therefore rightly registered as an elector, and that he as director of the aforesaid bank is duly qualified to be nominated and elected and returned as member of the Bengal Legislative Council. It was mentioned that in other commerce and industry constituencies, firms and companies are registered as electors in the rolls of such constituencies.

The following issues were determined:—

1. Is the petition barred by time?

2. Was Mr. Chakravarty properly nominated in view of the fact that his name does not appear in the Electoral Roll?

3. Has the petitioner waived his right, if any, to question the nomination, election and return of the Respondent?

Has he acquiesced in the correctness of the Electoral Roll and is precluded from questioning it now.

Issue No. 1—The Election Petition was filed on January 2, 1924. Mr. Chakravarty filed the return of his election expenses on December 14, 1923. It appears that the intervening days between December 28, 1923 and January 2, 1924, were notified by the Government as days to be observed as holidays. We have no hesitation in holding that the petition is in time.

Issue No. 2—Rule 8(2) of the Bengal Electoral Rules states that the qualifications of an elector for a special constituency shall be the qualifications specified in Schedule 2, in the case of that constituency. Turning to the Schedule 22, 13(2) we find that "life and ordinary members of the Bengal National Chamber of Commerce shall be qualified as electors for the constituency com-

prising the Chamber of which they are members."

Provided that no person shall be so qualified who has not a place of residence in India.

There is an explanation which runs:—

"*Explanation*—Member, life member, ordinary member include—

(*a*) in the case of a firm, any one partner in the firm, or if no such partner is present in Calcutta at the date fixed for the election, any one person empowered to sign for such firm, and

(*b*) in the case of a company or other corporation any manager or director or secretary of the company or corporation."

These qualifications are not enough to get the elector on the Electoral Roll. To be entitled to have his name registered "the person" must have the above qualifications and must not be subject to the disablities of minority, lunacy, and so on. Rule 7(1) governs Rule 8(2). Rule 10 again lays down that the person registered on the Electoral Roll shall be entitled to vote, but not if he is subject to the disabilities mentioned in Rule 7. Rule 6(*b*) says that no person shall be eligible for election as a member of the Council to represent a special constituency unless his name is registered on the Electoral Roll of the constituency, and to be fit for election under Rule 5 he must be a British subject, not a female nor a lunatic nor a bankrupt nor an unpardoned ex-convict and so-forth. Various other rules and regulations including Regulation 15 have been referred to and have been considered by us. We cannot but come to the conclusion that the legislature intended that it was a natural person who should have the right to be on the Electoral Roll and to be entitled to be a candidate. If the word "person" is construed strictly the idea of a firm being on the Electoral Roll must be discarded. We cannot go to the General Clauses Act or the English Interpretation Act for the proposition that a person includes an association. It is our duty to construe the law in question here. It is an accepted cannon of construction that unless there is something in the context to the contrary, the same word has the same meaning. The explanation in the schedule means no more than a firm must exercise the franchise through a partner or representative. It seems that by the constitution of these chambers and associations, forms and companies can be members of these bodies; but we do not consider that the legislature intended to put firms and companies on the Electoral Roll.

Firms being artificial persons can only act through a natural person. The question is did the legislature intend that the representation of a firm should be allowed to vote and stand for election without being on the Electoral Roll?

We must not be held into absurdities. Females, lunatics, minors, and aliens cannot be electors; but we are to hold that if they join with one another they should be deemed as electors. It was suggested that they may remain on the Electoral Roll thus joined as firms; but the disabilities might be considered when they exercise their right to vote. The disabilities have to be taken into account under Rule 7 when persons are to be put on the Electoral Roll, or during the period allowed for objections thereto.

Consider for a moment again where the proposition that a firm can be a voter, will lead us. It is the elector eventually who becomes a member of the Council. Does the firm become member of the Council? Certainly not. The candidate has to give the name of his father, his age, and if elected, he is to take the path. If he dies, resigns or goes away, etc., the constituency is called upon to elect another person. If the argument be that a firm is an elector, then the firm is eventually the elected person, and there is nothing to prevent the different members A, B, C of a firm sitting in the Council on different dates. Learned counsels are therefore forced to admit that when it comes to the question of election to the Council the candidate must be a natural person. We follow the rules down to the election the conclusion is that that candidate must be on the Electoral Roll. The question of an elector or a proposer or a seconder stands on the same footing.

With great respect to the learned Advocate-General we cannot follow him in this contention. We cannot add and subtract to bring the law into conformity with the way the Electoral Roll has been prepared. "We are not entitled", said Lord Loreburn Vickers and Evans (79 L. J. K. B. 955), "to read words into an Act of Parliament unless clear reason for it is to be found within the four corners of the Act itself." The learned Advocate-General wishes us to leave out the proviso clause about residence in the schedule and leave out the disqualification as affecting firms, and add this proviso and these disqualifications referred to a representative of the firm who is not himself on the roll. "Nothing is to be added to or to be taken away from a statute, unless there are adequate grounds to justify the inference that the legislature intended something which it omitted to express." (Tindal C. J. in Everett *v.* Wells, 2 M. and G. R. 277 and Lord Eldon in Davis *v.* Marlborough, 53 R. R. 29).

It was mentioned that the contention of the Petitioner, if given effect to, will cause great hardship. The hardship consists in the fact that in these Commerce and Industry Constituencies firms have been put on the Electoral Roll. We learn that there are only three individuals on the roll of the Bengal Chamber of Commerce and

none on the rolls of the Trades Association. The Electoral Rules seem to provide for a revision when the roll is very defective. The argument of hardship is dangerous one to listen to. Courts ought not to be influenced by any notions of hardship. "They must look hardships in the face rather than break down the rules of law." (Jessel in Ford *v.* Kettle, 9 Q. B. D., p. 139). Even if there were anything to suggest *aliunde* that it was the intention of the legislature to put firms on the Electoral Roll we are not at liberty to speculate. Our business is to construe not what the legislature meant but what its language means. We expound but we do not improve the statute. We are to remember, as Lord Bacon said, that our office is *jus dicere*, not *jus dare*. The law as laid down in these rules is not unreasonable or unjust, and natural construction cannot be departed from, merely because it may operate with hardship or injustice in some cases.

We hold that Mr. Chakravarty's name not being in the Electoral Roll he was not properly nominated. We hold that the election of Mr. Chakravarty was null and void and that it should be set aside. We are of opinion that a fresh election should be held to fill the vacancy so caused.

It has transpired that, however, that the Bengal National Bank Limited, nominated Mr. Chakravarty to contest the seat and empowered Mr. B. N. Banerji to vote for the Bank. Mr. Bose argues that there is nothing to prevent a firm from exercising these separate rights. It is sufficient to say that in the view we come to the person who can exercise the right to vote must be on the roll and the procedure was incorrect.

Issue No. 5—It was pointed out that the Electoral Rolls were prepared sometime ago. No objection was taken by the Petitioner then or before the Returning Officer. All parties proceeded upon the basis that there was a valid nomination paper. The Petitioner courted the election and has now come forward with his objection only after he has been unsuccessful. However morally wrong he may be, it cannot be said that there is any waiver. There is no question of estoppel. The Petitioner does not seem precluded from raising his present objection. It is an objection which goes to the very root of the matter. The Electoral Roll is final in certain matters, e.g., qualifications, but the question whether there is any disfranchisement by the statute itself is one which can be raised before the election court, (Stowe *v.* Joliffe, 1875, L. R. 9 C. P., p. 750). The issue is therefore decided in favour of the Petitioner and against the Respondent.

As the case against Raja Reshee Case Law was not pressed we do not think we should touch his case. We think that on plead-

ings and facts before us the election of Mr. Byomkesh Chakravarty should be set aside.

G. N. ROY
G. B. MUMFORD
G. N. MUKERJI

BENGAL LEGISLATIVE COUNCIL
BENGAL NATIONAL CHAMBER OF COMMERCE
(SECOND CASE)

AMULYADHONE ADDY (*Petitioner*)

versus

1. BYOMKESH CHAKRAVARTY
2. MURLIDHAR ROY
3. W. C. BANERJI

} (*Respondents*)

A retired Subordinate Judge is eligible for appointment as an election commissioner under the Bengal Election Rules. The words "who are or have been" clearly include those who were at one time High Court Judges.

The presumption is that Commissioners have been duly appointed.

At a previous election, one of the defeated candidates had challenged the election on the ground that the name of the respondent Mr. Chakravarti did not occur in the electoral roll and that firms and companies are not entitled to be so entered and vote. The election was set aside, and a fresh election ordered, the electoral roll was not corrected, and a fresh election was notified and held on the basis of the same electoral roll. Mr. Chakravarti again contested the election, and was again elected. His election was again challenged by a petition. Held that the defect of the absence of the name of Mr. Chakravarti goes to the very root of the matter, and his name not being on the roll, he cannot stand for election. Pembroke Borough Case 5 O'M. and H. distinguished.

There is well-established distinction between a candidate disqualified *ab initio* and a candidate who is subsequently found incapable of election. Notice of such disqualification in the former case is not necessary to have been given to electors, and all votes cast in favour of such candidate should be deemed to have been cast away.

There is no provision in Indian Election Law for making the returning Officer a party to a petition.

The validity of certain nomination papers was discussed.

This Election Petition has come up again from the Bengal National Chamber of Commerce Constituency. A number of firms

are members of the Bengal National Chamber of Commerce. When the Electoral Roll was prepared 118 present firms or companies were put on the Electoral Roll of this special constituency while sixty-two persons were entered by their names as electors. In the general election which took place in November, 1923, Mr. Byomkesh Chakravarty and Raja Reshee Case Law were declared duly elected. Raja Reshee Case Law was accepted as having been duly elected. Mr. Amulyadhone Addy, one of the defeated candidates, contested the election of Mr. Chakravarty on the ground among others, that his name was not registered on the Electoral Roll of the constituency and that firms and companies were not "persons" and were not entitled to be registered as electors within the meaning of the Bengal Election Rules and Regulations. It may be mentioned that Mr. Chakravarty's name did not appear on the Electoral Roll, though the Bengal National Bank Limited, of which he is a director, was on the roll. After a prolonged hearing we came to the conclusion that the Legislature intended that it was a natural person who should have the right to be on the roll and to be entitled to vote or to nominate or to be a candidate. We held that the election of Mr. Chakravarty was null and void, and we recommended that there should be a fresh election to fill the vacancy so caused.

In accordance with our report the election of Mr. Chakravarty was declared void. Thereafter by a notification dated April 28, 1924, His Excellency the Governor called upon the constituency to elect a member to the Legislative Council. Twelfth May was fixed for the last date for submission of nominations, and May 13, 1924, as the date for the scrutiny of nominations. On May 9, the Honorary Secretary to the Chamber of Commerce wrote to the Registering Authority and he moved the Government for a revision of the Electoral Roll under the proviso to Sub-rule (4) of Rule 9 of the Bengal Electoral Rules. He asked for instructions if the bye-election should be postponed. The reply of the Government (dated May 12, 1924) was that orders for a revision of the Electoral Roll were under issue, but that the bye-election will not be postponed but will proceed on the existing roll.

The Returning Officer accepted the nomination papers of all the four candidates, viz., Byomkesh Chakravarty, Amulyadhone Addy, Murlidhar Roy and W. C. Banerji. The Returning Officer issued ballot papers to firms and companies entered on the Electoral Roll.

After a reference to the Government, the Returning Officer rejected eighty-eight ballot papers which were furnished by firms or companies but counted the votes of natural persons and declared

the result as follows:—

Mr. Byomkesh Chakravarty	26
Mr. Murlidhar Roy	15
Mr. Amulyadhone Addy	15
Mr. W. C. Banerji	nil

Mr. Chakravarty was declared elected.

Mr. Addy filed a petition and Murlidhar Roy a counter-petition on which the following issues were framed.

1. Have the Commissioners jurisdiction to try the petition?
2. Is Mr. Amulyadhone a firm?
3. Is it open to the Petitioner to challenge the election in view of the Government notification calling for a fresh election?
4. Assuming that Mr. Chakravarty was not properly nominated can the Petitioner claim the seat?
5. Were the four votes mentioned in the petition of Mr. Addy improperly rejected?
6. What are the valid votes which each of the candidates got?

Issue No. 1—Mr. Bose raises the question that under Section 101(3) of the Government of India Act one of us (Rai Bahadur Girindra Nath Mukerji) is not competent to be a judge of the High Court by reason of the fact that he retired about three and half years ago. A judge of the High Court must be either or a person having held judicial office not inferior to that of a Subordinate judge for a period of not less than five years. Mr. Bose contends that "has held" has an element of continuity. He has referred to West's Grammar and 2 English cases 2 De G. P. and J., page 542 and 10 Q. B., page 283 and to stroud for the proposition that the words mean that to be a High Court Judge the Rai Bahadur must have held office immediately before his appointment. In the English cases quoted, the question involved immediate relationship or liability to the object, and the meaning was arrived at by a reference to the context. "Has been" in English, however, is apparently used for both the present and past tense. In Rule 36(2)(*a*) of the Bengal Electoral Rules the qualification for a commissioner is "who are or have been or are eligible to be appointed Judges of the High Court". "Who are or have been" clearly include those who were at one time High Court Judges. It seems to us that there is no reason to take the narrow view that a retired Subordinate Judge cannot be eligible for a High Court Judgeship. Even if we thought, therefore, that there was any defect in our jurisdiction, we would come to the "lame and impotent conclusion" which their Lordships of the Allahabad High Court came to in 16 All., page 136 and hold that the presumption is that we have been duly appointed.

Issue No. 2—Mr. Bose gave up this issue.

Issue No. 3—Mr. Bose seeks to distinguish the present case from the previous one on the strength of the Government letter dated May 12 referred to above. There was no reference on any question of interpretation of the rules, and it cannot be said that by the remark as the old roll. His Execellency meant to imply that all entries therein were correct and that Mr. Chakravarty could stand on the strength of any such entry. The letter points out an obvious fact that as the election cannot await the preparation of new roll it must proceed on the basis of the old one. The meaning was that it should proceed on the basis of the old roll so far as it was valid.

Mr. Bose quoted the case of Pembroke Borough reported in O'mally and Hardcastle, vol. 5. Some men remained on the register for the borough though they should have been put on the register for the county. The votes were allowed to stand because there was no question that they were qualified to vote. Here as we have remarked before, the defect goes to the very root of the matter. Mr. Chakravarty's name not being on the roll he cannot stand for election.

Issue No. 4—It was urged that Mr. Chakravarty cannot raise this question without filing petition of recrimination. An observation of Baron Martin (Fraser, page 225) was quoted:—"He may be unable to protect his own seat, has he not a right to show that you are not entitled to it?" Mr. Chakravarty cannot give evidence without filing a recrimination, but we do not think that he should be stopped from examining this question if it arises out of the facts of the case. The question is raised on the ground that it is a defective roll and on the ground that the twenty-six votes given for Mr. Chakravarty cannot be thrown away. It is argued that the electors had no notice. The cases in 3 Queen's Bench, page 629 and 3 Law Times Report, page 667 were quoted. Our judgment was published in the Gazette. The electors must be deemed to know the position very well. There is well established distinction between a candidate disqualified *ab initio* and a candidate found incapable of election. Notice is necessary in the latter case. The case in 9 Common Pleas (quoted by Parker, page 273), i.e., the case of Drinkwater distinguished the case quoted by Mr. Bose, viz., 3 Queen's Bench, page 629. The electors must have known that it had been held that Mr. Chakravarty was disqualified. The votes given by them must be treated as nullities. The case in 23 Queen's Bench, page 72 (Beresford and Lady Sandhurst) is opposite. We hold, therefore, that Mr. Addy can claim the seat on the basis of the bye-election which has taken place.

Issues Nos. 5 and 6—Evidence was given in respect of three votes. It appears that Pratap Chandra Ganguli did not sign the

ballot paper. The Returning Officer was not in a position to know in the absence of signature whether the particular elector has exercised his vote or not. The ballot paper was not completed. The Returning Officer was right in rejecting the vote.

The other votes must be taken into consideration. Tribhuban Das Heerachand shown in the Electoral Roll as such, signed his name as Tribhuban Heerachand. He has been examined. Mr. Chetty K. V. R. M. Ramanathan was described in the roll as "Messrs." instead of Mr. by the placing of the mark (ditto) under the name of a firm so described and his vote was rejected. He has deposed that he does business for himself alone. Obviously Messrs. has been put down by mistake. It is argued that there is no misnomer clause as in the Representation of People's Act, 198, and that the mistake cannot be corrected here. We follow the principles of English Law, however, in our decisions. The case of Moorhouse *v.* Linney, 15 Q. B. D., page 237, was quoted, but a different decision was given in Bowden *v.* Bisley, 21 Q. B. D., page 309. There is also the case in 23 Q. B. D., page 136. The roll is conclusive, but evidence can be given that a man had the right to exercise his vote. In the Oldham case (1 O'M. and H., page 153). Bradshaw was wrongly entered as Willam Mills. It was held that if a person was called by a wrong name in the register, it raised a difficulty, but he could show that he was really the man. There is the Exacter case reported in 6 O'M. and H. William John Langmead was on the register, but it was proved that he had left the place three years ago. Earnest Langmead was the occupier and really entitled to vote, and he voted in the honest belief that he had a right to vote. His vote was counted. We hold, therefore, that these two votes should be accepted and that Mr. Addy polled 17 votes.

The election of Mr. Chakravarty is declared void, and Mr. Amulyadhone Addy is declared elected in his place.

There is no provision in our law for making the Returning Officer a party. We do not think, however, that in the circumstances of the case we can direct the Petitioner to pay his costs.

Petitioner to get his costs from Mr. Chakravarty.

GIRINDRA NATH MUKERJI
G. B. MUMFORD
G. N. ROY

BOMBAY LEGISLATIVE COUNCIL
BOMBAY CITY (M.U.)

MOHOMEDALI ALLABUX (*Petitioner*)

versus

1. JAFFERBHOY ABDULBHOY LALJI
2. HUSSEINALLY M. RAHIMTULLA
3. MOHOMED HUSSEIN (*Respondents*)
4. MIRZA ALI MOHOMED KHAN
5. EBRAHIM SULEMAN HAJI

All candidates who contested the election should be joined as parties to a petition in which a claim for the seat is made by the petitioner.

The claim by a petitioner for the seat is separate and distinct from that which calls in question the election of the returned candidate, and as the returned candidate alone need be joined when there is no claim for the seat is made, the petition is good in so far as it calls in question the election of the returned candidate even in the absence as parties of some one or the other of the candidates.

The Commissioners have no power to allow a respondent to be added after the expiry of the period of limitation.

The right to recriminate is exercisable only when the claim for a seat is made by the candidate concerned.

The hiring of conveyances to take voters to the poll, need not, to avoid the election, have been the act of the candidate, provided it can be shown that the election of the returned candidate was procured or induced by the hiring, etc., or that the result of the election has been materially affected thereby.

The addition of further instances of the same charge (in this case personation) alleged in the petition does not constitute the making of a further charge of corrupt practices, but only gives further instances of the commission of the same charge of the particular corrupt practice. It is in fact an amendment of the particulars of the corrupt practice originally alleged.

The first two Respondents were declared elected.

There were altogether eight candidates at the election but the four who got the fewest votes were not made parties to the petition.

The petition calls in question the election of the first Respondent and also claims a declaration that the Petitioner has himself been duly elected.

The ground on which the election of the first Respondent is called in question are that the first Respondent was guilty of the

corrupt practices of personation with connivance within the meaning of Clause 3, Part 1 of Schedule 4 of the Election Rules, and of hiring or using public conveyances within the meaning of Clause 5 of the same schedule.

The particulars of acts of personation were allowed to be amended by our order appended and marked "B".

The allegations of personation with connivance were not proved.

The first Respondent at the outset submitted that the petition could not sustained and should be dismissed in its entirety by reason of the fact that the Petitioner had omitted to join as respondents all the other candidates who were nominated at the election.

By our ruling appended hereto and marked "C" we held that the claim by a Petitioner under Rule 32 ought to be declared duly elected is separate and distinct from that portion of the petition which calls in question the election of the returned candidates, and that as the returned candidates alone need be joined when there is no claim to be declared duly elected, the petition was good in so far as it called in question the election of the first Respondent.

An application was made by the Petitioner for leave to join as respondents to the petition the two other candidates who were nominated at the election but who had not been made respondents to the petition.

By our ruling appended hereto and marked "D" we held that we had no power to order or permit such joinder.

Rule 35 directs in effect that subject to the other provisions of the Electoral Rules, our procedure is to be governed by the Civil Procedure Code, which relate to the trial of suits; and Section 5 of the Electoral Offences and Enquiries Act, 1920, confers on us the powers vested by the Civil Procedure Code in a court when trying a suit in respect of certain matters which are specifically mentioned and which do not include the joinder of fresh respondents or the amendment of the petition.

The only power of amendment is that conferred by Rule 31 under which we may allow the particulars in the list of corrupt practices to be amended.

The Petitioner has not complied with the requirements of Rule 32 by joining as respondents all the other candidates who were nominated; and his claim to be declared duly elected could not be proceeded with.

The first respondent had, however, within the time prescribed given notice under Rule 40 of his intention to recriminate against the Petitioner by proving that he had himself been guilty of the corrupt practice of bribery and personation and of hiring and using

public conveyances.

As the right to recriminate is only exercisable when the Petitioner claims the seat for himself, these recriminations were withdrawn, so far as the present petition is concerned, but the first Respondent claimed the right to raise such recrimination in any future proceedings.

In our opinion it has been established that fifty hired taxis were in fact used for promoting the election of the first Respondent and that the result of the election has been materially affected thereby (the majority in favour of the first Respondent was 500).

Under Rule 43 we report that the first Respondent has not been duly elected.

We record under Rule 45 that no corrupt practice has been proved to have been committed by the first Respondent or his agent.

Our recommendation is that the Petitioner be liable in the first instance for the cost of setting up the commission. The first Respondent do pay the Petitioner the cost of setting up the commission and the taxed costs of and incidental to the filing of his written statement and of the costs incurred by the first respondent, if any, in connection with the list of further particulars of the charge of personation which was filed by the Petitioner and in connection with recriminations put forward by the first respondent.

D. CHAMIER
KRISHNALAL M. JHAVERI
K. H. KELKAR

ANNEXURE A

In our opinion the addition of further instances of the same charge—personation with connivance—does not constitute the making of a further charge of corrupt practices, but only gives further instances of the commission of the same charge of the particular corrupt practice of personation with connivance. It is in fact an amendment of the particulars of the corrupt practice which was originally alleged.

It is contended by the Respondent 1 that so far as the particulars contained in the supplementary petition are concerned, no inspection is necessary for the Petitioner's case, because he charges personation with connivance, and positive charge of that nature can only mean that a Petitioner makes a definite case based on his knowledge or on evidence which is available.

So far as the five instances contained in Schedule 2 of the original petition are concerned, they stand on a different footing because connivance is not therein charged. The absence of a charge

of connivance may imply that the Petitioner has not positive knowledge of personation, and it may follow that it would be unfair and unnecessary to prevent him from having inspection of the counterfoils relating to these five instances.

It may at once be stated that no question of interfering with the secrecy of the ballot, because the production of the mere counterfoils would not disclose how the elector voted.

We hold that the Petitioner is not entitled to have inspection of any counterfoils at the present stage relating to the charges of personation with connivance.

We also hold that the Petitioner is entitled to inspect at the present stage the five counterfoils which relate to his charges without connivance and set out in Schedule 2 to the petition.

The inspection of these five counterfoils will be taken by the Petitioner or his legal advisor in the presence of a clerk of the Collector and of the Secretary to this commission, and of the first Respondent or his legal advisor.

ANNEXURE B

It is contended for the first Respondent that the entire petition should be dismissed on the ground that it is one and its prayers are inseparable.

Under Rule 30, a petition may be presented against a returned candidate on the ground that corrupt practices have been committed by him or his election agent. No further charge or claim need be made.

Rule 32 confers a separate and distinct right on a petitioner which he may or may not avail himself of. It enables him, if he so desires, in addition to calling in question the election of the returned candidate, to claim a declaration that he himself or any other candidate has been duly elected.

This is a right which is in terms expressed to be in addition to the right of challenging the election, and we have no difficulty in holding that a claim of this nature is separable from a claim calling an election in question. This view receives support from the decision in Aldridge *v.* Hurst, Law Reports, 1 C. P. D. at page 415, where the court states—"We see no reason why the prayer claiming the seat for some one might not form the subject of a separate petition from that which is directed against the return of the sitting member."

ANNEXURE C

The Petitioner asks to be permitted to join as respondent the two other candidates who, as is now admitted were nominated at

the election, but who were not made respondents in the original petition.

It is contended for the Petitioner that the joinder of the two other candidates can be permitted and Rule 33 is relied on which provides that subject to the other provisions of the rules an election petition shall be enquired into as nearly as may be in accordance with the procedure applicable under the Code of Civil Procedure. It is also contended that rules permit of such joinder.

The main provision in the rules to which the Civil Procedure Code must be read as being subject are those contained in Rule 40, under which a right to recriminate is conferred. It is contended for the Petitioner that the proviso to this rule which prohibits such recrimination unless the notice and deposit there referred to shall be given or made within the time limited is enacted for the protection of the Petitioner and may be waived by him; and he offers to waive performance of these conditions precedent to recrimination being raised. He also relies on the fact that Rule 32 imposes no limit of time during which all the other candidates should be joined.

Under Rule 32 it is incumbent on the Petitioner to join all other candidates who were nominated if he claims the declaration that he was duly elected, and under Rule 34 the petition only has to be served on the respondents who have been joined.

The present petition therefore has not as yet been served on two proposed respondents. It has, however, been published in the Gazette, and it may be that it was competent to them to apply under Rule 34(2) (*b*), to be joined as respondents, and the fact that a respondent so seeking to be joined is liable to give security as if he were a petitioner indicates that he is regarded as a party who will set up a substantive case, which can only be to prove that the Petitioner ought not to be declared elected.

But where a candidate who has not been joined so insists upon being made a respondent, he must, under Rule 34(2) (*b*) do so within 14 days of the publication of the petition, and if he recriminates, he must, under the provision to Rule 40(1) give notice of his intention within the same limit of time, and supply a list of particulars similar to that which the Petitioner is bound to supply. In effect he becomes a petitioner against the Petitioner.

If such a candidate insists upon being made a respondent in the manner provided, the omission of the Petitioner to join him in the first instance may possibly be cured. And in our opinion that is the only way in which a candidate who ought to have been joined and who has not been joined can become a respondent.

In the present case neither of the candidates who ought to have been joined and who were not joined has complied with the

requirements of either Rule 34 or Rule 40, and even if they claimed to be joined now or were ordered by us now to be joined, the joinder could not be made in the manner provided by the rules referred to.

It must therefore be held that we have no power to order or permit the joinder of the two candidates who were nominated at the election but were not joined as respondents in the petition.

BOMBAY LEGISLATIVE COUNCIL
BOMBAY CITY NORTH (N.M.U.)

JOSEPH BAPTISTA (*Petitioner*)

versus

1. J. K. MEHTA
2. POONJABHOI THAKERSEV } (*Respondents*)
3. A. N. SURVE AND TEN OTHERS

Working at a place in the ordinary course of business during business hours does not constitute residence at that place.

Acceptance of a nomination paper by the Returning Officer is not conclusive, and the election court can question the order of the Returning Officer on that point.

The improper acceptance of a nomination paper is a material irregularity which would avoid an election.

Leave to withdraw the petition against one of the respondents was granted when the Commissioners were satisfied that the application for withdrawal was not induced by any bargain or consideration.

This petition has been presented under Rule 30 of the Electoral Rules by Mr. Joseph Baptista, calling in question the election of the first three respondents, who have been declared to be duly elected or returned for that constituency. The other respondents have been made formal parties in compliance with Rule 32, and no relief is claimed against them.

The Petitioner also applied under Rule 37 for leave to withdraw his petition in so far as it affects the second Respondent. This leave was granted as we were of opinion that the application was not induced by any bargain or consideration.

The special qualifications which an elector must possess are prescribed by Rule 6, which provides *inter alia* that no person shall be eligible unless his name is on the Electoral Roll of the constituency or of any other constituency in the province, and he has for the period of six months immediately preceding the last date for the nomination of candidates resided in the constituency or in a

division any part of which is included in the constituency, the city of Bombay being deemed to be a division.

The first Respondent maintains a house at Santa Cruz which is situated some miles north of the northern boundary of the city of Bombay in the South Salsette Taluka; that he sleeps and takes his morning and evening meals there; and that the members of his family always remain there, sleep and take all their meals there. The first Respondent is engaged as a Secretary to and works in the offices of the Indian Chamber of Commerce which are situated in the city of Bombay, and he spends the usual working hours and takes refreshments during the day at those offices. It is not suggested that the first Respondent maintains a second place where he sleeps and takes his meals or where the members of his family remain and sleep and take their meals within the city of Bombay.

For the first Respondent, two contentions are put forward; first that by maintaining a residence at Santa Cruz he did reside within the constituency within the meaning of Rule 6, provided that the rule be read with Clause 2 of Schedule 2; and second, that even if his residence in Santa Cruz be held not to be residence within the constituency, his presence in the city of Bombay at the offices mentioned in itself constitutes a residence which is sufficient to comply with Rule 6 read by itself.

Under Rule 6 it is perfectly clear that no person is eligible for election unless he resides in the manner therein prescribed.

With regard to the second contention, namely, that the presence of the first Respondent in the city of Bombay during working hours as the secretary to and in the offices of the Indian Chamber of Commerce, constitutes residence within the meaning of Rule 6, this was supported by reference to decisions under English Statutes relating to bankruptcy, payment of taxes, etc., and in which the words used are in some cases residence or place of business. In any case we must follow the rule of construction that a statutory enactment should be construed with reference to its object, and there can be no doubt that the object of Rule 6 is to ensure that elected members should reside in the ordinary and actual sense of the word among their constituents. A definition of the words "place of residence in a constituency" is contained in Part 2 of the rules for the Council of State, and though that definition is given for the purposes of that part, its wordings may, in our opinion, be adopted as well expressing the nature of the residence which the legislature intends that the elected members should have, as prescribed by Rule 6.

In our opinion the Respondent was not at the date of nomination eligible for election as he had no place of residence in the cons-

tituency, or in a division any part of which is included within the meaning of Rule 6.

It has been contended that the acceptance of the nomination paper by the Returning Officer is conclusive, as no objection was raised before him as to the first Respondent's disqualification under Rule 6, and as his name was on the Electoral Roll for the constituency for which he stood. We do not accept the contention.

No recrimination has been made against the Petitioner in accordance with Rule 40, and he has secured the next largest number of votes after the first two candidates, and we therefore report under Rule 43 that he has been duly elected.

We recommend under Rule 43(2) that the sum of Rs. 250 be paid to the Advocate General's representative by the Petitioner that the costs of setting up this tribunal be paid in the first instance by the Petitioner and that the Petitioner be entitled to recover 2/3rds of such costs from the first Respondent.

D. CHAMIER
KRISHNALAL M. JHAVERI
K. H. KELKAR

UNITED PROVINCES LEGISLATIVE COUNCIL
BULANDSHAHR DISTRICT WEST (N.M.R.)

THAKUR MANAK SINGH (*Petitioner*)

versus

1. LALA BABU LAL
2. LALA PIARE LAL } (*Respondents*)

The wordings of explanation to Section 1, Part 1, Schedule 5 of the United Provinces electoral rules are ambiguous. The rules permit the payment by a candidate of the election expenses of another candidate, provided that they are shown in the return of election expenses. But it could not be the intention of the legislature that one candidate should procure the withdrawal of another candidate by payment of his election expenses.

The statement that a particular member voted in a particular manner in the Council is not one relating to the personal conduct and character of the candidates, and as such cannot avoid the election, even when falsely made.

But a candidate for election for a public office should be careful in the statements that he makes, and where the respondent was proved to have been negligent in ascertaining the truth of the statement that he made regarding the manner in which the petitioner voted, the respondent even though successful, was yet not awarded his costs.

The Commissioners are not competent to decide whether the Petitioner is barred by time after it has been accepted by the Governor.

The Petitioner was the unsuccessful candidate. The first Respondent was the successful candidate. Respondent No. 2 withdrew from the contest on the eve of the poll.

The following issues were framed:—

1. Is the Election Petition time-barred?

2. Did the Respondent No. 1 secure the withdrawal of Respondent No. 2 from his candidature by payment or offer of Rs. 1400? If so, does this amount to corrupt practice and did Respondent No. 2 abet this corrupt practice and has he incurred the disqualification mentioned in Rule 5, Clause 3 of the Electoral Rules?

5. Did Respondent No. 1 publish or cause to be published false statements of fact in relation to the personal conduct and character of the Petitioner?

Issue No. 1—The Petitioner has not pressed the plea of limitation. Nor do we consider that we are competent to inquire into this point after the petition has been accepted by the Governor. Issue decided against the Petitioner.

Issue No. 2—After discussing the evidence the learned Commissioners came to the conclusion "It is true that Salig Ram must be regarded as, through his employer, somewhat under the influence of the Nawab of Chhatri who supported Lala Babu Lal. But the facts as disclosed by the evidence seem to be that though the withdrawal of Lala Piare Lal may have been first mooted by Lala Babu Lal or his supporters yet the question as to the payment of his election expenses seems to have been first raised by Saligram. Discussion as to the amount of expenses did certainly take place in correspondence between Saligram's employer and the Nawab of Chhatri but we cannot find that any offer or promise of gratification was made by Babu Lal or his agent or by any other person with his connivance in order to induce Lala Piare Lal to withdraw from his candidature.

We therefore decide this issue against the Petitioner.

In this connection it was urged that the wording of the last sentence of the explanation to Section 1, Part 1, Schedule 5 of the Electoral Rules permits the payment of the election expenses of another candidate by a candidate provided that they are shown in the return of election expenses and that therefore a payment by Lala Babu Lal, even if proved would not be illegal.

We admit that the wording of the explanation in question is not free from ambiguity but we do not think that it could have been the intention of the Legislature that one candidate should procure

the withdrawal of another by payment of his election expenses. We suggest that this ambiguity should be removed by amendment of the rules.

Issue No. 5—Lala Babu Lal, Respondent No. 1, on or about November 25, 1923, issued a handbill entitled "zamindaran tatha kashkaran sahiban ke liye zaruri ittila" in which he stated that the canal rates are now nearly double what they formerly were, even in this Thakur Manak Singh voted for the enhancement of the rent which resulted in a very great burden on the tenants". In his printed reply to this Thakur Manak Singh states "this rumour is absolutely false that I voted for the enhancement of the canal rates or that such a proposition was ever put forward in Council, nor was there any occasion for voting on it. It is true that no direct motion for enhancement of canal rates came before the Council; but in direct form the question was before the Council on three occasions. The fact that Thakur Manak Singh did not speak or vote on any those occasions may have justified Lala Babu Lal or his informant in arriving at the conclusion that Thakur Manak Singh did not oppose the enhancement of the rates. Hence while the allegation is false in form in which it stands, it cannot be held to be devoid of a substratum of truth. We hold that the statement complained of is not proved to have prejudiced the prospects of Thakur Manak Singh's election. We further hold that the statement complained of was not in relation to the Petitioner's personal conduct and character but rather to his character and conduct in his public capacity as a member of the Legislative Council. We have been referred to the Ballia case in I.E.P., page 28, but the circumstances of that case were not similar to those of the present case. In that case the statements were such as seriously to affect the personal character of the Petitioner.

We agree with the view of the Madras Election Commissioners in dealing with the Election Petition (3 of 1922) from the West Coast and Nilgiris N.M.R. constituency that "that the statement that a person voted (or did not vote)" in a particular way is an assertion of a historical fact, a mere setting forth a political act in a person's political career. What result that act may have had on the interests of constituents is not a question of fact but of opinion, and therefore, will not come within the mischief of the rules.

We think that Lala Babu Lal was culpably negligent in failing to verify the truth of the statements before he published them. It is incumbent for a candidate for a public office to verify all the statements with regard to the actions of a third person before publishing them.

We recommend that the petition should be dismissed.
We recommend that each party to bear his own costs.

H. NELSON WRIGHT
V. E. G. HUSSEY
G. C. BADHWAR

BENGAL LEGISLATIVE COUNCIL
BURDWAN DIVISION (SOUTH) M.

MAULVI MUHAMMAD SUHRAWARDY (*Petitioner*)

versus

MAULVI ZUHOOR AHMAD (*Respondent*)

The Petitioner asked for scrutiny and recount on certain grounds. The Respondent filed a recrimination petition under Rule 42 of the Bengal Electoral Rules after depositing the security required under Rule 35.

Issues were framed and witnesses examined.

The Petitioner filed a petition for leave to withdraw his petition. The Petitioner stated that he was in bad health and that he realised that his petition involved a prolonged enquiry, which he was unable to attend to. We examined the Petitioner and the Respondent and we are satisfied that the petition of withdrawal has not been made by any bargain or consideration. We therefore allow the petition to be withdrawn.

G. N. ROY
G. B. MUMFORD
GIRINDRA NATH MUKERJI

BENGAL LEGISLATIVE COUNCIL
CALCUTTA NORTH CONSTITUENCY (N.M.U.)

SASHI KUMAR SEN GUPTA (*Petitioner*)

versus

JATINDRA NATH BASU (*Respondent*)

To avoid an election on the ground of illegal hiring of conveyances it must be shown that the result of the election was materially affected by such illegal hiring or use of hired conveyances. It is not necessary to show that the candidate or his agent hired the taxis concerned.

There were three candidates Mr. Jatindra Nath Basu, B. Krista Lal and Dr. Sashi Kumar Sen Gupta. They polled 1,121; 996; and

808 votes respectively. On the date fixed the learned counsel appearing for the Petitioner informed us that he would limit his case to the hiring, etc., of the taxi-cars and the absence of seals on the boxes and bags.

The following issues are framed:—

1. Was there any hiring, employing, borrowing, and using of vehicles as alleged in paragraph 7? If so, did it materially affect the result of the election?

2. Was there any non-compliance with any rule or regulation framed under the Act? If so, has the result of the election been materially affected thereby?

Issue No. 2—Complaint is made in the petition that the doctor brought to the notice of the Returning Officer fact of the absence of his seals on the bags. The objection was apparently not serious and was given up.

The suggestion was made that there may have been any tampering because of the discrepancy between the figures of the presiding officers and the figures actually found in the ballot boxes. There were nearly 2,000 ballot papers used. The discrepancy is only 5. According to the return under Regulation 39, every ballot paper issued to a voter may not have gone into the ballot box. It appears that voting for the Indian Legislative Assembly was going at the same time. In this constituency three ballot papers were rejected, because they were meant for the Indian Legislative Assembly. It is possible that these five electors of this constituency put their papers in boxes meant for the Indian Legislative Assembly or did not eventually exercise their right to vote. We were repeatedly asked to send for the ballot papers and hold an enquiry. We are surprised that it should be thought necessary to institute an enquiry on such slender materials. It is not shown that there was any non-compliance with any rule or regulation. Issue No. 2 is therefore decided against the petitioner.

Issue No. 1—Under the English law it is now an illegal hiring to let or hire or employ or use for the purpose of conveying electors to or from the polls any public stage or hackney-carriage. The offence of illegal hiring becomes an illegal practice when committed by the candidate, election agent or sub-agent and when so committed, the election may be set aside (Parker, page 294-295). The illegal practice must be brought home to the candidate or his agent. Where several hired motor-cars were lent to a candidate by a friend but it was proved that, although the candidate had asked the friend for some cars, he did not know and had no reason to believe that the cars sent had been hired, it was held that the friend not being an agent no illegal practice, for which the candidate was respon-

sible, had been committed (East Dorset, 6 O'M. and H., pags 37 and 48). With us it is apparently not necessary to show that the candidate or his agent hired the taxis; but on the other hand the election can only be set aside if it is proved that the result of the election has been materially affected by hiring or use of such taxi-cars.

Mr. J. N. Basu's majority over the next candidate—we may note—was 125. If we could believe from the evidence that fifty or sixty taxis were used, we might have held that this was sufficient to show that the result of the election was materially affected thereby, but even then the question would arise whether the voters carried in those taxis would not have voted as they did or would have refrained from voting, if the taxis had not been there. Assuming that 125 voters were so carried and that they voted for Mr. J. N. Basu, if they would have voted for him in any case how could it be said that the result of the election was materially affected by their carriage? We note in this connection that the alleged voters who were examined by the petitioner were not questioned by him on this point. They were not asked for instance, "Would you have voted as you did if you had to walk?" If again the vote has to be rejected as tainted it is not impertinent to ask whether the voter knew or had reason to believe that he was being taken to the poll in a forbidden conveyance. It may be very hard matter to upset an election under Section 5, Part 2 of Schedule 5 read with Rule 44: but we are not concerned with that. Holding as we do that a very few taxi-cars could be used, our conclusion is that the result of the election has not been materially affected thereby.

Petition should be dismissed. Petitioner to pay Respondent's costs.

G. N. Roy
G. B. Mumford
Girindra Nath Mukerji

BENGAL LEGISLATIVE COUNCIL

CALCUTTA SOUTH (N.M.U.)

S. N. HALDER (*Petitioner*)

versus

S. N. MALLIK (*Respondent*)

The omission by a candidate to record the date of his declaration in his nomination is merely a technical irregularity, which does not vitiate the nomination paper.

The Chairman of the Calcutta Corporation is not an "official" within the meaning of the Bengal Electoral Rules, and as such is eligible for election as a member of the Legislative Council.

The test to determine whether the incumbent of a particular post is an official or not are;—(1) What is the source from which he draw his salary and (2) what is the authority by which he may be removed.

Mr. Halder objected to Mr. Mallick's nomination on the ground that he being an "official" was ineligible for election.

Mr. Mallick on the other hand objected to Mr. Halder's nomination on the ground that no date had been put in the place provided for it in the declaration.

The Returning Officer rejected Mr. Halder's nomination.

The points that we have to decide are two. The first is whether the omission of the date in the declaration part of the nomination paper is sufficient to render the nomination a nullity and whether in consequence the Returning Officer was right in rejecting it under Regulation 21 (1) (3).

The second is whether Mr. Mallick as Chairman of the Calcutta Corporation is an "official" within the meaning of Section 134 of the Government of India Act, and is therefore disqualified for election under the provisions of Section 80-B of the Act.

We think that if it had been the intention of the legislature to make the date of the acceptance of the nomination by the candidate an integral part of the nomination paper it would have made it a special provision to that effect in the rules. The introduction of the words "and duly dated" after the word "completed" would have been all that was necessary. In point of fact the rules are entirely silent about that date upon which this declaration is to be signed.

The conclusion therefore at which we arrive is that while the provisions in the rules relating to the preparation of the nomination paper are mandatory, they should not be so regarded so far as filling up the date of acceptance of the nomination is concerned. At the highest they are directory and there is abundant judicial authority for the proposition that where a provision is merely directory, a substantial compliance therewith is all that is required. In the case of Sham Chand Basak *v.* The Chairman of the Dacca Municipal Board (I. L. R. 47 Cal., page 524) the learned Judges referred to a number of English cases wherein the validity of an election was in question. In the case of Woodward *v.* Sarsons, Lord Coleridge, C.J. made some comment on the effect of Section 13 of the Ballot Act of 1872. That section provides that "no election shall be declared invalid by reason of a non-compliance with the rules contained in the first schedule to this Act . . if it ap-

pears to the tribunal having cognisance of the question that the election was conducted in accordance with the principles laid down in the body of the Act and that such non-compliance did not affect the result of the election." Lord Coleridge held that the section was inserted *ex abundanti cautela* and that the same rule would have applied by virtue of common law, even if the section had not existed. The substance of the matter as observed in the case of Sham Chand Basak is that "infringement of a rule does not necessarily invalidate the election as it would have done if the rule had been deemed mandatory in character."

In the present case we have no hesitation in finding that the provisions of Rule 11 which we regard as mandatory, namely, the presentation to the Returning Officer of a completed form by the candidate and his acceptance of the nomination have been complied with. The omission by the petitioner to record the date in the declaration though a technical irregularity as pointed out by the Returning Officer, is in our opinion, no more than unsubstantial departure from the law, and we hold that the Returning Officer was error in refusing to accept the nomination specially when it had been signed in his presence. We are therefore of opinion that the improper refusal of the Petitioner's nomination paper by the Returning Officer has materially affected the result of the election and that the election of the returned candidate should be held to be void.

We now come to the second branch of our enquiry whether Mr. Mallick as Chairman of the Calcutta Corporation was an "official" under the Government of India Act and was therefore ineligible for nomination or election. Section 80-B of the Government of Act lays down that, "An official shall not be qualified for election as a member of a local Legislative Council" and Section 134 says that the "expression 'official' and 'non-official' where used in relation to any person mean respectively a person who is or is not in the civil or military service of the Crown in India." It is further provided that holders of certain offices may be excluded by rules under the Act but that these must be specified in each case. Under the powers conferred by Sections 134 and 129-A of the Government of India Act a notification No. 614-G, dated 9th September 1920, was issued and under it the rules called 'Non-official (Definition) Rules' were framed. Rule 2 is in these terms:— "The holder of any office in the civil or military service of the Crown if the office is one which does not involve both of the following indicents, namely, that the incumbent—

(*a*) is a whole-time servant, and

(*b*) is remunerated either by salary or fees,

shall not be treated as an official for any of the purposes of the Government of India Act."

It is therefore contended on behalf of the Petitioner that Mr. Mallick as Chairman of the Calcutta Corporation is an "official" as he is a whole-time servant of Government and is remunerated by salary which is fixed by the Government. The learned counsel has referred to a number of sections in the Calcutta Municipal Act which show that the Chairman is appointed by Government and may be removed by Government and that Government exercises control over him in certain respects. He urges that the question by whom he is paid his salary is immaterial. It is contended that he is in the civil service of the crown in India and is therefore debarred from election to the Council. Reference is made to Section 14 of the Indian Penal Code where the words "servant of the queen" denote "all officers or servants continued, appointed, or employed by or under the authority of the Statutes 21 and 22 Victoria Chapter 106 or by or under the authority of the Government of India or any Government" and to Section 21 where a "public servant" is defined. Reference is further made to the definition contained in Section 2(17) (*b*) of the Civil Procedure Code where a "public officer" is said to include "every officer in the service or pay of the Government or remunerated by fees or commission for the purpose of any public duty." This definition has been judicially held to include the Administrator General, the Official Trustee and the Official Assignee.

Learned Counsel for the respondent on the other hand refers to the rules made under Section 96-B of the Government of India Act which are now known as "The Fundamental Rules."

Rule 2 explains that a Government servant is one whose pay is debitable to Civil Estimates in India, while Rule 9(7) defines Foreign service as service in which the Government servant receives his substantial pay from any source other than the general revenues of India. General revenues are defined in Rule 9(8) while Local Funds which include corporation funds are defined in Rule 9(14). The Chairman of the Calcutta Corporation is, under Section 114(1) of the Calcutta Municipal Act, paid out of municipal funds, and he therefore does not come within the definition of the rules contained in the notification No. 614-G, dated the 9th September, 1920.

We consider that the source from which a Government servant draws his salary is one of the tests for determining whether he is a servant of the Crown or not, and whereas in the present case, the Chairman of the Corporation receives his salary from the municipal funds we cannot think that he is a Government servant

within the meaning of the notification. This however, is only one test. A further test is by whom he is liable to be dismissed. Under Section 96-B of the Government of India Act every person in the Civil service of the Crown in India holds office during His Majesty's pleasure and may not be dismissed by any authority subordinate to that by which he was appointed. The Chairman of the Corporation is appointed by Government and under Section 11 he may be removed from his office by Government at its discretion, but the section goes on to say that he shall be removed from his office if his removal is recommended by a resolution which has been passed at a special meeting and in favour of which not less than 2|3rds of the Commissioners present at the meeting have voted. When this test is applied it is evident that the Chairman is not in the Civil service of the Crown in India and is, therefore, not an "official" who is *ipso facto* debarred from election. We accordingly decide the second issue against the petitioner.

Parties to bear their own costs and the fees of the Advocate General be paid by the parties in equal shares.

A. J. CHOTZNER
D. C. PATTERSON
GIRINDRA NATH MUKERJEE

BEHAR AND ORISSA LEGISLATIVE COUNCIL
CHAMPARAN NORTH (N.M.R.)

AMBIKA PRASAD (*Petitioner*)

versus

1. LAKSHMI MOHAN MISRA
2. RAI SAHIB RAM GOPAL SINGH CHAUDHRI } (*Respondents*)

When the voters' number was marked on the backs of ballot papers in two of the polling stations, and it was not shown that those engaged in counting the votes could not, from the electoral roll numbers appearing on the backs of ballot papers, have known for whom the votes were cast, it was held that the secrecy of the ballot had been violated, and the ballot papers so marked should be rejected.

A scrutiny should be allowed only in cases where the majority in favour of the returned candidate is small.

Where a substantial portion of the electorate is prevented from voting on account of any breach of the law, the election should be set aside.

Respondent had polled 843 votes, the Petitioner 721, and Respondent No. 2, 167 votes.

The Petitioner asks for a security and claims the seat on the ground that 212 votes recorded at the Bettiah Polling Station and 149 recorded at Lauriya Polling Station on behalf of the Respondent No. 1 were improperly accepted by the Presiding Officer and that there was a material irregularity in conducting the election. It appears that at both these polling stations the Electoral Roll number of the voter was marked on the back of each ballot paper and that it was thus possible for the persons engaged in the counting to ascertain the indentity of the voter. The number of marked ballot papers found in the box of the Petitioner was 77 at Bettiah and 40 at Lauriya.

If these marked ballot papers had been rejected the number of votes received by the Respondent No. 1 would have been reduced from 843 to 482 and those received by the Petitioner from 721 to 604. It was unsuccessfully urged by the Petitioner before the Returning Officer that the marked papers should be rejected and that he should be declared to be duly elected.

It is by no means shown that those who were engaged in the counting could not from the Electoral Roll numbers appearing on the defective ballot papers have ascertained who the voters were. The secrecy of the ballot was therefore violated, and the first question is whether it has affected the result of the election. The answer is in the affirmative.

The next question is whether the election should be declared void or whether upon a scrutiny and after rejecting the challenged votes Petitioner should be declared to have been duly elected. As has been observed by Hammond in "The Indian Candidate and Returning Officer" at page 173 a scrutiny should be allowed only in cases where the margin is small; but where a substantial portion of the electors have been prevented from recording their votes effectively owing to a breach of the law we think it would be wrong to allow the election to stand. Here no less than 515 persons out of a total of 1,731 were prevented from effectively recording their votes and the rule laid down in Warrington's case (1 O'M. and H. 42) cannot be applied. A very substantial proportion of the voters have been prevented from voting effectively through the fault of the Presiding Officer and the election should, in our opinion, be declared void. The law on the subject has been fully discussed in Woodward *versus* Sarsons.

The returned candidate has not been duly elected. Election set aside. Costs awarded to the Petitioner against the Respondent.

B. K. MULLICK
J. F. W. JAMES
A. D. PATEL

MADRAS LEGISLATIVE COUNCIL
CHINGLEPUT (N. M. R.)

K. V. KRISHNASWAMI NAYAKAR (*Petitioner*)

versus

1. A. RAMASWAMI MUDALIYAR
2. C. MUTHIAHMUDALIYAR } (*Respondents*)

No candidate is entitled to claim a recount or scrutiny as a matter of right. A recount or scrutiny is a matter entirely in the discretion of the court and the Petitioner has to make out and prove specific grounds which will satisfy the court that the return was not accurate, and that a recount and scrutiny are called for in the interest of justice.

Canvassing by teachers of Local Boards does not by itself amount to undue influence or render the election void, even though it might violate against departmental rules.

The Petitioner claims a general recount and scrutiny of votes. It is well-settled law that no candidate is, as a matter of right, entitled to such a recount or scrutiny merely for the asking. It is matter of discretion for the court and the Petitioner has to make out and prove specific grounds which will satisfy the court that the return was not accurate and that recount and scrutiny are called for in the interest of justice.

In this case the learned Commissioners held that there was no ground to grant a recount or scrutiny of votes.

Allegations of undue influence were also put forward. All that we find is a certain amount of canvassing by members of taluk boards and the teachers of the local board schools. Such canvassing by these teachers may be against departmental instructions, but does not in our view amount to a circumstance which would vitiate the election. It might lead to the inference that pressure was brought to bear on these teachers, but that any undue influence was exercised by them over voters, we do not find proved. We therefore dismiss this petition. Respondent will get his costs from the Petitioner, fixed by us in one sum at Rs. 1,600.

E. H. WALLACE
V. V. SHRINIVASA AYYANGAR
P. SUBBIAH MUDALIYAR

BEHAR AND ORISSA LEGISLATIVE COUNCIL
CHOTA NAGPORE DIVISION (M.R.)

KHWAJA HAKIM JAN (*Petitioner*)

versus

MAULVI SHEIKH MUHAMMAD HUSAIN (*Respondent*)

The Manager of a court of wards is a Government servant and an "Official" within the meaning of the Government of India Act and as such not eligible for nomination as a candidate for election to Legislative Council.

A person must be qualified to be elected as a member of the Council at the moment when he offers himself for nomination. If there is any ground of disqualification, the Returning Officer cannot accept his nomination.

It was admitted at the time of the scrutiny of nomination papers that the Petitioner was at the time of the nomination the manager of an estate under the management of the Court of Wards and it was contended that the Petitioner was an official within the meaning of Section 80-B of the Government of India Act. The Returning Officer allowed the objection and rejecting the nomination paper of the Petitioner he declared the Respondent to be duly elected.

The Petitioner now contends that the election is void, firstly on the ground that the nomination was valid, and, secondly on the ground that the Returning Officer had no jurisdiction to reject the nomination paper.

It was urged that a manager of a court of ward is not an official as defined in Rule 2 of the rules framed under Section 134 of the Government of India Act; firstly, because he is not a Government servant, and, secondly, because he is not paid by the salaries or fees out of general revenues of the Government of India.

The expression Government servant is not defined in the Act, but there is not any difficulty as to its meaning. From Section 1 of the Act it is clear that India is governed in the name of His Majesty the King-Emperor and that all rights which, if the Government of India Act 1858 had not been passed, might have been exercised by the East India Company may be exercised by and in the name of His Majesty as rights incidental to the Government of India. The Government is carried on either directly through the Government of India or indirectly through the local Governments. According to the General Clauses Act of 1897, Government includes the Government of India and Local Governments.

If the Court of Ward is subordinate to the Local Government then the Petitioner being employed by the Court of Wards is clearly a Government servant.

It is contended that the Court of Wards is a statutory body independent of Government, but a reference to Bengal Act 9 of 1879 from which statute the court derives its authority shows that this contention cannot be accepted. Section 5 of the Statute enacts that the Board of Revenue shall be the Court of Wards. Section 3 provides that the court may delegate certain functions to Commissioners and Collectors. Section 69 enacts that in exercising its powers under the Act the court is to be guided by the advice and instructions of the Governor in Council. Section 48 enacts that the manager shall be guided by the instructions of the court in the application of the moneys recovered by him subject to the special orders of the Board as regards the order of priority in respect of certain heads of expenditure—subject to the provisions of the Act, the acts of the court are the acts of the Board of Revenue. Now the Board of Revenue is nothing but a name of a body of Civil Servants under the Crown in India. A brief examination of the history of the legislation on the subject will make this clear.

The first Board of Revenue was established by the order of the Court of Directors of the East India Company in 1771. It consisted of the Governor and Members of the Council and an Accountant-General with assistants and was located at Calcutta. That body was succeeded by a Committee of Revenue under whom there were Provincial Councils stationed at Burdwan, Murshidabad, Patna, Dinajpore and Dacca. In 1781 the Provincial Councils were abolished and their duties were transferred to the Committee of Revenue which had been reorganised and now consists of four covenented servants of the Company. In 1786 this Committee of Revenue was abolished and a Board of Revenue was again established. This Board consisted of a number of Government servants whose duties were superintendence and control over the subordinate officers and rules for their guidance were incorporated in Regulation 2 of 1793. By Regulation 3 of 1822 three such Boards of Revenue for the Lower, Central and Western Provinces were respectively established, and the Board of Revenue for the Lower Provinces, within which fell the present province of Bihar and Orrissa, consisted of such number of members as the Governor-General in Council might from time to time appoint. In 1829 by Regulation 1 of that year, Commissioners were appointed with the powers of the Board subject to certain modifications but were placed under the instructions and control of a Sadar or Chief Court of Re-

venue. Section 4 of that Regulation prescribed the Commissioners and the Sadar Board were to be regulated by the orders of the Governor-General in Council who was empowered to fix stations at which they should reside when not employed on duties of circuit. By Act 39 of 1850 the Board of Revenue in the Custom, Salt and Opium Departments, which had been constituted by Regulation 4 of 1819, was merged in the Sadar Board of Revenue which was henceforth to be styled as the Board of Revenue for the Lower Provinces of the Presidency at Fort William in Bengal. Finally upon the partition of Bengal in1912 and the creation of the province of Bihar and Orrissa, the legislature of this province passed Act I of 1923 constituting a Board of Revenue for Bihar and Orrissa, and by Section 5 of the Act all references to the Board of Revenue constituted under the Board of Revenue Regulation 3 of 1882 or the Bengal Revenue Commissioners Regulation 1 of 1879 or to the Boards referred to in the Bengal Board of Revenue Act of 1850 were to be construed as reference to the Board as reconstituted by the Bihar and Orrissa Act.

Accordingly it seems clear that the members of the Board of Revenue have from the earliest times been the servants of Government.

Therefore it follows that the Court of Wards also is a body comprised of such servants.

Now, Section 39 of the Act confers power upon the court to appoint a manager to manage the property of the ward and Section 41 empowers the court to pay the manager an allowance out of the property for his care and pains in the execution of his duties. The manager therefore is also a Government servant within the meaning of Section 134 of the Government of India Act.

It is admitted that the manager is a whole time officer and that he is paid by a salary, but it is contended that he is not an official as the salary does not come out of the revenue of India. The reply to this is that Rule 2 of the non-official rules made under Section 134 of the Government of India Act does not prescribe that the salary shall be paid out of the revenues of the Government of India. Even if it did so the manager would not fall within the rule, for there is nothing in the Court of Wards Act which precludes the Government in case of necessity from advancing money for the purpose of paying the manager and recouping itself from the income of the property. In such a case, the manager could be said to be paid out of the general revenues and the rule even in its restricted sense would be applicable to him. But, in our opinion, Rule 2 contains no implied restriction and prescribes that a Government servant shall be an officer whenever he receives

his salary from the hand of Government no matter from what source derived.

The Petitioner fulfills the conditions required by the rule. He is therefore an official.

Our attention has been drawn to the fact that in Nazamuddin *v.* Queen Empress (I. L. R. 28 Calcutta 344) there were observations by a Division Bench of the Calcutta High Court that a court of wards manager was not a public servant within the meaning of the Indian Penal Code and it is suggested that Section 59-A of the Court of Wards Act was expressly enacted in order to meet the difficulty raised by these observations. It is not necessary for the purposes of this case to consider the correctness of the reasoning of the learned judges in the case above referred to, for it does not appear to be material to consider whether the manager would or would not be public servant within the meaning of the Government of India Act.

An attempt has also been made to show that the income of the estate which is managed by the Petitioner is a local fund within the meaning of Rule 9(14) (*a*) of the fundamental rules framed under Section 86-B of the Government of India Act, and that as the Petitioner is paid by such a fund he is not a Government servant on foreign service and that it cannot properly be said that he receives any salary from Government. In our opinion the fundamental rule in question has no bearing upon the case; the income of the estate is not a local fund and it is sufficient that the manager receives his salary from the hand of Government.

We find, therefore, that the Petitioner being an official is not qualified for election to the Legislative Council.

The next question is whether it was competent to the Returning Officer to reject the nomination paper. Now Rule 9 of the regulations framed by the local government, under the Election Rules of 1920 runs as follows:—"The Returning Officer should decide objections to the nomination paper itself; but he should not determine the question whether the candidate is duly qualified or not or whether the candidate's age as stated in the nomination paper is correct or not."

Clause 1 of Regulation 24(4) empowers the Returning Officer after a summary enquiry to reject the nomination paper on the ground that the candidate is ineligible for election under Rule 5 or 6. But neither of these rules prescribe that a person shall not be eligible for election because he is an official. They prescribe other grounds of ineligibility and the question is whether the Returning Officer was bound to disregard the provisions of Section 80-B of the Government of India Act and to accept the Petitioner's

nomination so long as he did not suffer from any of the disabilities specifically enumerated in Rule 5 and 6. In our opinion the rules are neither exhaustive nor exclusive. It is true that Rule 11 prescribes that a person may be nominated as a candidate for election if he is eligible for election under the rules. But the rules are framed under Sections 72-A and 129-A of the Act and are therefore subject to the provisions of the Act. The Petitioner would therefore not be eligible under Rules 5 and 6 if he was already disqualified under Section 80-B. It follows that the Returning Officer acting under Regulation 24 was bound to take notice of the disqualification of the Petitioner by reason of his being an official. His nomination paper was therefore rightly rejected.

Generally speaking, it may be said that in England the only duty of the Returning Officer is to decide objections to the nomination paper itself. He has no jurisdiction to determine such a question as to the qualification of a candidate which can only be determined by an Election Petition, and it would seem that Rule 9 of the rules of 1920 was intended to follow the English practice. But in a municipal election case decided upon the provisions of the Municipal Corporations Act of 1822 in England it was held that the Returning Officer should reject any nomination paper which is on the face of it a mere abuse of the right of nomination or an obvious unreality, as for instance, if it purports to nominate a deceased Sovereign; Harford *v.* Lynskey (1899) 1 Q. B. 852. In our opinion these principles also apply in India and the rules and regulations of 1923 give effect thereto.

Finally it was contended on behalf of the Petitioner that the Returning Officer's proper duty was to accept the nomination and to leave it to an aggrieved party to raise the question of the Petitioner's ineligibility by an Election Petition in the event of his being elected, and it was also suggested that the Petitioner might have freed himself from his disability by resigning his post before being elected. In the view which we take the point does not arise but it is of interest to note that in Harford *v.* Lynskey above referred to a doubt was expressed as to whether a minor who attained his majority between the nomination and the poll would be disqualified. In our opinion Rule 11 requires that a person must be qualified to be elected as a member of the Council at the moment when he offers himself for nomination. If there is any ground of disqualification, the Returning Officer cannot accept his nomination on the chance that the disqualification may be removed before the election is completed. Election includes nomination which is one of the processes necessary to complete it, and it is reasonable that eligibility for election should be the measure of eligi-

bility for nomination. In our opinion Regulation 24 requires the Returning Officer to make a summary enquiry into the candidate's eligibility under Rules 5 and 6 read with Section 80-B of the Act.

Petition fails with cos--

N. K. MULLICK
J. F. W. JAMES
A. D. PATEL

BENGAL LEGISLATIVE COUNCIL
DACCA CITY (N.M.U.)

SHYAM CHAND (*Petitioner*)

versus

1. RAI BAHADUR PYARE LAL
2. DHIREDRA CHANDRA RAY
3. SATISH CHANDRA SARKAR

(*Respondents*)

The rule in England as well as in India is that a ballot paper not bearing on its back the official mark must be rejected.

The test to determine whether the rule has been complied with is whether looking at each ballot paper, there was evidence of an intention to make the official mark, and of a recognisable official mark on the back.

The regulation enjoining secrecy of ballot papers is applicable when there is no election petition. But when in an election petition, the question of non-observation of the secrecy above referred to was raised, the official marks could not be kept secret.

The Petitioner alleged that certain ballot papers not bearing on their backs the official mark should be rejected. The Respondent No. 1 contended that, as the official mark on the ballot papers was to be kept secret under the Bengal Electoral Regulations, those papers could not be inspected by the Petitioner and that, therefore, the Petitioner's allegation with regard to the absence of the official mark on the back of some of the ballot papers could not be enquired into. In our opinion there was no substance in this, since the regulation enjoining secrecy of the official marks, obviously was applicable only when there was no enquiry on an Election Petition. When, however, such an enquiry was ordered on an Election Petition, in which the very question of non-observance of the secrecy referred to above was raised, the official marks could not be kept secret during that enquiry.

It was alleged that on some of the ballot papers the official mark had not been put on the back, and that, therefore, Regulation

47(1)(*a*) had been infringed. It appears that the ballot paper was put inside the press (Ex. 1) with the back of the paper turned up, and that, by the pressure on the paper made by the officer, the impression produced on the back of the paper was the letter "B" in relief, whilst that on the front of the paper was the same letter, hollow. Now, it appears that on some of the ballot papers in question, the letter "B" in relief appears on the front, and not on the back and it was thus contended that those papers should have been rejected by the Returning Officer, and should now be excluded by us. We are unable to concede to this contention or to grant the request made. The question to be considered—*vide* "Rogers on Elections", page 148—is whether "looking at each ballot paper there was evidence of an intention to make the official mark, and of a cognisable official mark, upon its back." Now, the ballot papers, in respect of Respondent No. 1, which bear the official mark "B" in relief on the front, and not on the back still bear and that too distinctly part of the same official mark "B", though hollow. It is thus clear to us that there is evidence of an intention to make the official mark, and of a recognisable official mark, upon the back of each of these papers, though through inadvertence these papers were not put in the press with their back turned up, so that, by the pressure of the press, the impression produced on them could have been the letter "B" in relief. There cannot be the slightest doubt, however, that there has been substantial compliance with the Regulation 22 of the Bengal Electoral Regulations in respect of the ballot papers, the validity whereof has been questioned. The learned counsel for the Petitioner urged strenuously before us that the test to be applied, as referred to in the above passage in "Rogers on Elections", was based on Section 13 of the English Ballot Act, and that the rules and regulations under the Bengal Electoral Rules did not contain any provision corresponding to Section 13 of the English Ballot Act. We are, however, of opinion that under Rule 44(1)(*c*) of the Bengal Electoral Rules, we have to consider whether the irregularity in question has materially affected the result of the election. Bearing this in mind, therefore, as also the fact that both in England and India it is imperative, as a general rule of law, that a ballot paper not bearing on its back the official mark must be rejected, the test referred to in the above passage is equally applicable in considering the effect of such irregularity during an election in this country. Thus, for reasons noted by us, the irregularity in question cannot be said to have materially affected the result of the election.

NOTE—There were other charges but evidence adduced in respect to them all was held to be "not only unreliable and unsatis-

factory, but in many cases produced by pecuniary considerations".

Petition dismissed with costs assessed at Rs. 1,500.

RAI KAMALANATH DAS BAHADUR
M. YUSUF
S. N. GUHA

Material portions of Regulations referred to in the report.

Regulation 32.—Immediately before a ballot paper is delivered to an elector, it shall be marked on the back with the official mark, etc.

Regulation 47(1).—A ballot paper shall be rejected if—

(*a*) It has not on its back the official mark.

BOMBAY LEGISLATIVE COUNCIL
DHARWAR DISTRICT (N.M.R.)

PETITION NO. 1

S. K. HOSMANI (*Petitioner*)

versus

1. V. N. JOG
2. S. T. KAMBLI
3. C. C. HULKOTTI

(*Respondents*)

PETITION NO. 2

C. C. HULKOTTI (*Petitioner*)

versus

1. V. N. JOG
2. S. T. KAMBLI
3. S. K. HOSMANI

(*Respondents*)

The Commissioners decided to hear both the petitions together.

The Petitioner jointly presented an application praying that the Commission be pleased to direct a recount before the commencement of the inquiry, as this would be convenient to the parties and would shorten the sittings of the Commission, and would materially reduce the expense of the parties. The Commissioners granted the application and the President deputed one of them Mr. Palmer, to make the recount. He did so at Dharwar on the 6th, 7th and 8th March and submitted his report.

NOTE—The recounting did not affect the result of the election.

One set of costs allowed for both petitions for Respondent No. 1 and 2. Petitions dismissed.

M. E. CHAUBAL
C. E. PALMER
P. B. SHINGNE

BENGAL LEGISLATIVE COUNCIL
DINAJPORE (M.R.)

MAULVI YAQINUDDIN AHMAD (*Petitioner*)

versus

1. MAULVI KADER BUX
2. MUNSHI MAFIZUDDIN } (*Respondents*)

It is not open to the Commissioners to question the form, verification, and other things relating to the petition which happened prior to the appointment of the Commission.

The Commissioners have power to allow amendment of particulars.

When there are more than two candidates at the election, and the Respondent is elected by a very large majority, the seat cannot be given to the Petitioner only because the successful Respondent is unseated. Even when there are only two candidates, the Petitioner cannot get the seat unless it is shown that after striking out invalid votes, the Petitioner has polled a majority of lawful votes.

An agreement between two defeated candidates by which one who secured the larger number of votes agreed not to claim his preferential right over his rival cannot be given effect to as it is an infringement of the right of the constituency to select their representative by their votes.

In English Law there is distinction between a corrupt and an illegal practice, and in the case of the later motive or intention is immaterial. The doctrine of *mens rea* as applicable to felonies has led to a decision in England that before a corrupt practice can be held to have been committed, a corrupt motive must be established. Schedule 5 of Bengal Electoral Rules includes what are corrupt practices in England as well as illegal practices. Therefore, the Indian Rule is not concerned with the honesty or otherwise of the person said to have committed personation provided his act falls within the words of the rule.

The appointment of a close relation of the presiding officer as an agent of a candidate at the polling station of which the former is the presiding officer, though not forbidden, is yet highly improper.

Considerable doubts were expressed as to whether the Indian Electoral Rules exclude all false statements except those relating to the personal conduct and character of a candidate. But the rule relates only to direct statements of fact and not inferences from facts, however unjustified the inferences might be.

A person who fails to establish anything but a minor part of his case should be made to bear the costs of the petition.

The following issues were framed:—

1. Does the leaflet Exhibit A, containing as it does extracts from the report of the Committee on the amendment of the Bengal Tenancy Act without the observations in the note of dissent thereto, amount to a false statement as to the conduct of the Petitioner?

2. If so, did the Respondent No. 1 believe it to be false or did he not believe it to be true?

3. Is the statement at the bottom of the leaflet Ex. A, that the Committee recommended the proposals to be carried into law false?

5. Was either of such statements, if false, reasonably calculated to prejudice the prospects of the Petitioner's election?

8. Is the charge of personation in Paragraph 12(*b*) of the petition established?

9. If so, was the personation at the instance of, or with the connivance of, the Respondent?

Issue No. 8—A man giving his name as Kafuruddin and his father's name as something quite different from Abdul Hakim appeared at the poll, his vote was challenged by the Petitioner but he was allowed to vote after identification, the necessary entries being made in the list of challenged votes. Subsequently another man appeared who gave his name either as Kafuruddin or as something slightly different from it and his father's name as Abdul Hakim, and his vote was taken on a tendered ballot paper.

It was argued before us that personation being a corrupt practice, a corrupt motive must be established, and that if a man has an innocent motive, or acts under a *bona fide* mistake, he cannot be held guilty of personation. That this is the English Law as to personation seems certain, and the same view was adopted in this country in the Punjab South East Towns case reported at page 166 of Hammond's Indian Election Petitions. We are, however, unable to agree with this view and would observe that in the precedent above quoted the Commissioners followed their decision in the Rohtak case (Hammond, page 183) which relate to an offence defined in Section 171-C of the Penal Code, in which the word "voluntarily" occurs and not to an offence defined in Section 171-D in which no such word is to be found. As our view leads to the apparently absurd conclusion that a man may be convicted of an offence under Section 171-F, however innocent his intention, we consider it desirable to give our reasons for the view in order that the question of removing this apparent defect in the Electoral Law may be considered. The definition of personation in the Electoral Rules and in the Penal Code is taken from the English Corrupt and Legal Practices Prevention Act of 1883. By that act personation is declared to be punishable as a felony. The Act itself is silent as to

the motive or intention of the offender, but the doctrine of *mens rea* as applicable to felonies has led to the decision in England that before a corrupt practice can be held to have been committed a corrupt motive (which the later authorities show may exist without any moral corruption) must be established. In this country the doctrine of *mens rea* has been held inapplicable since the passing of the Penal Code on the ground that the definitions of offences in the Code describe the intention, knowledge, etc., which must be proved before a particular offence can be held to have been committed. We are therefore unable to follow the English courts in applying the doctrine of *mens rea* and are compelled to look to the section itself in the Penal Code and to interpret it as it stands with reference to the various definitions in the Code. The section being silent as to the intention or knowledge of the offender and containing, so far as we can see, no word the definition of which introduces any question of knowledge or intention, it necessarily follows that the offence must be committed whenever the requisite facts have been proved, regardless of the intention or knowledge of the offender.

There is a further difficulty in the way of our accepting the English Rule that a corrupt practice cannot be proved unless a corrupt motive is shown. Every electoral offence described in Schedule 5 is called a corrupt practice. In English Law there is a distinction between corrupt practices and illegal practices, and in the case of the latter motive or intention is immaterial. Schedule 5 includes what are corrupt practices in England as well as what are illegal practices. If therefore the English Rule as to corrupt practices be followed, a practice such as hiring of a liquor shop as a committee room, which is quite clearly meant to be forbidden absolutely, will in this country be permissible if the intention of the hirer is innocent.

We therefore hold that we are not concerned with the honesty or otherwise of the person said to have committed personation provided his acts fall within the words of the rule. On the evidence before us in this case we are satisfied that there is only one entry in the Electoral Roll under which either of the two persons who voted can come, viz., entry No. 36 of Ward D in which the elector's name is given as Kafuruddin and his father's name as Abdul Hakim. We are further satisfied that each of these persons is qualified and that both should have been on the roll. Personation is a criminal offence, and before the offence can be held to be established it must be proved that the person entered in the roll is beyond any reasonable doubt some one other than the man charged with personation. We find it impossible to say on the materials before us that

either of these two would be voters is, or is not, the voter entered in the roll, nor do we see any chance of obtaining any more light on the matter by calling any further evidence. We accordingly hold that this charge of personation has not been proved.

Issue No. 9—In view of our decision in issue No. 8 the question does not arise.

Issue Nos. 1 to 5—There can be no question that the leaflet, Exhibit 2, contains no statement about the personal character or personal conduct of the Petitioner, and it has been strongly urged on behalf of the Respondent that Clause 4 does not apply to statements of fact in relation to the public conduct of a candidate. To decide this point we have found it necessary to refer to the English authorities. The rule we have to interpret is practically a verbatim copy of the English Law. But *prima facie* the words "personal character or conduct" do not necessarily show that the conduct must be personal, apart from considerations arising from the conditions of a particular country which will be dealt with later, there is no apparent principle on which a deliberately false statement of fact relating to the public conduct of a candidate should be permitted by the election law. Only two instances have been brought to our notice or discovered by us in which statements as what was clearly public conduct have been before the Election courts in England, but we recognize that this may be due to the fact that the general trend of English cases is in favour of the view that statements as to such conduct do not concern those courts. The first of the cases referred to is the Cockernouth case (5 O'M. and H., page 155). At page 163 a statement that a candidate voted in Parliament in a particular manner is considered. Though holding that this was not criticism of personal conduct Darling J. proceeded to find that it was to a very large extent true. In the Attercliffe Division case reported in the same volume Walton J. at page 233 states, "Paragraph 3 and 4 to my mind relate obviously to public acts and to public conduct alone. I do not say that they may not be within the Act;" he then proceeds to decide the case on the ground that the statements are not false statements. We are unable to hold that the English authorities definitely decide that only statements relating to personal conduct and not those relating to public conduct come within the rule. We would observe that it appears a matter worthy of serious consideration whether exclusion of statements relating to public conduct from the purview of the rule is desirable under the present conditions of the country. The English Law on the subject was only passed in 1895, and if it was intended to exclude public conduct the reason may well have been that the electorate was very largely literate and also in the

habit of reading newspapers, which were numerous and widely circulated. False statements as to public conduct would therefore not be likely to mislead most of the electors, and their falsity could be easily shown. These considerations do not seem to apply to this country as yet, and in view of the damage which could be done candidate's prospects at an election by the circulation of false statements as to his public conduct we are very doubtful whether the rule was ever intended to exclude such statements. We are, however, relieved of the necessity of deciding the question in view of our conclusions on the question whether the present case can be brought within the rule at all.

We hold that the statement referred to in Issue No. 3 clearly refer to the report of the Committee. (On the amendment of the Bengal Tenancy Act of which the Petitioner was a member) as a whole and therefore does not come within the rule as to statements about a candidate. We have been asked to hold that if a leaflet contains statements of fact each clearly true, but the inference which would be naturally drawn from them would, owing to the failure to state certain other facts, be false, then there is a false statement of facts in the leaflet. We can find no authority in support of this view and we are not prepared, in view of the undoubted latitude allowed to candidates at elections, to hold that anything except a direct statement of fact would come within the rule. After considering the leaflet most carefully we hold that the statements of fact contained in it with which we are concerned are that a certain committee had submitted a certain report and that Petitioner was a member of that committee. Both those statements are true and as the Electoral Law so far as we can see does not concern itself with opinions, suggestions, inferences, or innuendoes but merely with statements of fact, we hold that the Petitioner has failed to bring the leaflet within Clause 4.

Petition fails.

We see no reason to depart from the ordinary rule that a person who fails to establish anything but a very minor part of his case should be mulcted in costs. We accordingly direct that the costs of the Respondent No. 1, which we assess at Rs. 600, be paid by the Petitioner to that Respondent and that the Petitioner should bear his own costs.

E MILSON
JADAVA CHANDRA BHATTACHARJI
AMBIKA CHARAN MUZUMDAR

THE PUNJAB LEGISLATIVE COUNCIL
FEROZPORE CASE (M.R.)

PIR AKBAR ALI (*Petitioner*)

versus

CHAUDHRI NAJIBUDDIN (*Respondent*)

In England a false statement made for the purpose of affecting the return of any candidate is called as an illegal practice, and the definition includes both beneficial as well as prejudicial statements. In India, the law is that only those statements are prohibited which prejudice the chances of a candidate's election and not those which improve them, even though it may be that a false statement beneficial to a candidate may be indirectly harmful to his rival.

The failure of the Petitioner and his agents to bring to the notice of the presiding officer the commission of a corrupt practice at the time, was held to be a clear indication of the falsity of the evidence.

Undue influence includes any direct or indirect attempt to interfere with the free exercise of a voter's electoral right, but this cannot be taken to shut out legitimate canvassing.

Spiritual undue influence is not restricted to inducing a person to believe that he will be the object of Divine displeasure or spiritual censure.

The filing of an incorrect return of election expenses will not by itself avoid an election, but will serve to disqualify the Respondent and the consequent vacation of the seat.

It will appear that only such false statements with respect to the personal character and conduct of a candidate fall within the rule as are "reasonably calculated to prejudice the prospects of such candidate's election." Now, in the present case, the false statement is alleged to have been made with respect to the conduct of the Respondent in order to raise him in the estimation of a certain class (anti-Government) voters (the statement was that the Respondent being a lawyer had suspended practice) and thus to improve and not to prejudice his prospects. Consequently, the alleged statement cannot fall within the definition, in Rule 4 of Part 1 of Schedule 5 of the Electoral Rules. The law in England in this connection appears to be somewhat different. There, any false statement made 'for the purpose of affecting the return of any candidate' is classed as an "illegal practice", and the definition would seem to include "beneficial as well as prejudicial" statements (*vide* Section 1 of 58 and 59, Vict. C. 40, and Rogers on Elections,

volume 2, 19th edition, pages 557-558). But, for some reason or other, a different wording has been adopted in India. It is, no doubt, possible that a beneficial false statement in favour of a candidate might be as harmful to his rival as a false statement about the rival himself. However we must take the definition as it stands and we are constrained to hold that it cannot bear the interpretation sought to be put upon it by the Petitioner.

Our finding on the charges of personation is that to cases of 'personation' have been established, but it is not proved that these were 'procured or abetted' by the Respondent or his agents. These clauses are, therefore, not sufficient to avoid the election under Rule 44(*b*) of the Punjab Electoral Rules. Their effect is only to reduce the number of votes for the Respondent by two; but as the Respondent had a majority of 377 votes, the result of the election cannot obviously be affected.

Another charge is that of undue influence with regard to the distribution of copies of the "fatwa" and preaching by Maulvis. The "fatwa" is a declaration by several Ulemas of different places that the followers of Mirza Ghulam Ahmad of Qadian, who are known as Mirzais or Ahmedyas, are not true Musalmans. The Petitioner is a Mirzai and his allegation is that this "fatwa" was obtained and circulated by the Respondent to prejudice his election. He has also alleged that certain Maulvis were preaching at the polling stations to the same effect as the "fatwa". The Respondent denies that the "fatwa" was either obtained or circulated by him. We find it difficult to beleive that the Petitioner or his agents (specially the Petitioner who is himself a lawyer) would have failed to bring the fact to the notice of the Presiding Officer, if copies of the "fatwa" were openly distributed at the polling station in the manner now alleged. In the Darbhanga case (North-East) of 1920, the failure of the Petitioner's agents to complain to the Presiding Officer was taken, in similar circumstances, to be a clear indication of the falsity of their evidence (*See* I. E. P., vol. 1, at page 104). After carefully weighing the evidence on both sides, we are unable to place any reliance on the Petitioner's evidence as regards the distribution of the "fatwa" by the agents of the Respondent.

One of the contentions of the Respondent with respect to this charge was that the "fatwa" does not constitute any attempt to exercise 'undue influence' at all, as it merely expresses the opinion that a Mirzai is not a fit person to represent Musalmans. There is, we think, considerable force in this contention. The definition of 'undue influence' as given in Schedule 5 of the Electoral Rules of 1923, is no doubt very wide in its terms and includes "any direct or indirect attempt to interfere with the free exercise of a

voter's electoral right." But this cannot be taken to shut out even legimate canvassing. In England, the right of the clergy to exercise their influence within certain limits is well established. The limits are clearly defined in the 'Longford' and 'Galway' cases (2 O'M. and H. 16 and 1 O'M. and H. 305). In the 'South Meath' case, O'Brien, J. remarked that the rule of law, as laid down in the Longford case, is in substance, this, that it is the undoubted right of the clergy to canvass and induce persons to vote in a particular way, but that it is not lawful to declare it to be a sin to vote in a different manner or to threaten to refuse the sacraments to a person for so doing (4 O'M. and H. at 132). The explanation given in Clause (*b*) under the definition of 'undue influence' suggests that the rule is not intended to be different in India. The definition of 'undue influence' given in the Electoral Rules of 1920 has been, no doubt modified, and spiritual undue influence is not now restricted to 'inducing a person to believe that he will be the object of Divine displeasure or censure'. But the 'explanation' may be fairly taken to indicate the nature, if not the scope of the spiritual undue influence contemplated by the rule. In the present instance, the 'fatwa' merely says that Mirzais have no concern with Musalmans, that they cannot be the representatives of Musalmans. It does not declare it to be a sin to vote for Mirzais, nor is there any threat held out to those who will vote for Mirzais. Habibulrahman, one of the Maulvis, whose opinions are given in the 'fatwa' says that it is not lawful ('jais') to send a Mirzai as a representative of the Musalmans, but the reason he gives for his opinion is that Mirzais are inimical to the interests of Islam. It was urged by the Petitioner that this is or at least would be construed to show that the Ulemas, whose opinions are given, exercise any influence amongst the voters of the Ferozpore district. Asghar Ali, the only Ulema, who was produced as a witness, is only a professor in a college. There is no reason to think that he would exercise any such influence as a spiritual leader, as for example a Pir, or that his word should be taken as a command. Several of the Petitioner's own witnesses have stated that they voted for him inspite of the 'fatwa'. Undue influence must be established by evidence and cannot be arrived at by conjecture (2 O'M. and H. 200, and 1 I. E. P. 137). It must be remarked that we are dealing with a case of representation of a Mohammedan constituency and it cannot be said that religion had nothing to do with the election. According to the Election Rules, only a Mohammedan can be elected to represent a Mohammedan constituency.

However even if the 'fatwa' were supposed for the sake of argument to constitute "undue influence" within the definition of the

term in India, the result of the election will not be affected in the present case. As 'agency' is not established the case does not fall within Clause (*b*) of Rule 44 of the Electoral Rules. As regards Clause (*d*) of the same rule, there is no evidence to show that the election has not been a 'free election' owing to a large number of cases in which undue influence has been exercised. The result of the election, therefore, is not affected in any case.

We now come to the remaining charge, viz., that the return of election expenses is incorrect and false in material particulars. This charge will not, by itself, avoid the election, but will serve to disqualify the Respondent and may eventually lead to his seat being declared vacant. The Petitioner has in our opinion failed to substantiate this charge also.

The recriminatory petition filed by the Respondent also must fail as we consider the Respondent's evidence to be inadequate to establish any charge.

We reckoned that both the petition and the recriminatory petition should be dismissed. Parties to bear their own costs.

M. V. VHIDE
J. M. MACKAY
D. C. RALLI

ASSAM LEGISLATIVE COUNCIL
GOLAGHAT CASE (N.M.R.)

SRIJUT TARA PRASAD (*Petitioner*)

versus

RAI BAHADUR DEVI CHARAN BARUAH (*Respondent*)

The identity of a candidate should be ascertained by a summary inquiry by the Returning Officer in case it is challenged.

The register is not conclusive as to a disqualification arising out of a candidate's minority, and the question can be enquired into by the Returning Officer, as also by the election Commissioners in a petition.

The improper rejection of a nomination paper by the Returning Officer is a material irregularity, which affects the result of the election.

The nomination paper of the Petitioner was presented to the Returning Officer and rejected on the ground that the name of the candidate as given in the nomination paper was not the same as given in the Electoral Roll.

The Petitioner submits that his nomination paper was improperly rejected.

In the nomination paper we find the number of the candidate in the Electoral Roll of the constituency in which he is registered

as an elector as 6312. But on turning to the Electoral Roll we find number 6312 of the roll is Tara Prasad Baruah. Hence the Returning Officer's finding that the candidate's name is not to be found in the Electoral Roll.

The Petitioner has explained that he changed his name in August 1923 from Tara Prasad Baruah to Tara Prasad. This is corroborated by an entry on page 796 of the Assam Gazette of August 11, 1923, in which it is directed that in a certain previous notification of the Gazette 'Srijut Tara Prasad' is to be read for 'Srijut Tara Prasad Baruah'. We have taken evidence and satisfied ourselves that the candidate 'Tara Prasad' is the individual who is entered in the Electoral Roll No. 6312 as 'Tara Prasad Baruah'.

The candidate himself as well as his proposer and seconder were present at the scrutiny of the nomination paper but were not questioned as to the identity of the nominee which they could have easily have established. In these circumstances we think that the nomination paper was improperly rejected. Finally, we have to consider whether the improper rejection of the nomination has materially affected the result of the election.

On this point it has been urged on behalf of the respondent that inasmuch as the nomination should have been rejected under Electoral Rule 5 (*f*) on the ground that the candidate was under 25 years of age, the fact that the nomination was improperly rejected on other grounds has not materially affected the result of the election. The evidence showed that the returned candidate objected at the time of the scrutiny of the nomination paper that the Petitioner was not eligible for nomination as being under 25 years of age. But instead of making any enquiry into the age of the candidate, it appears that the Returning Officer said he could not go behind the Electoral Roll which showed the age of the Respondent to be 23. (Incidently this would show that he accepted the identity of the candidate with No. 6312 of the Electoral Roll).

On evidence the Commissioners held the age of the Petitioner to be over 25 years at the time of the nomination.

We therefore find that the Petitioner was not disqualified for nomination, and that the Returning Officer properly rejected the Petitioner's nomination paper on the ground referred to in the petition, we hold that the Respondent has not been duly elected, and the election is therefore void. We assess the costs at 10 gold Mohars to be paid by the Respondent to the Petitioner.

R. E. JACK
H. K. NIYOGI
J. BOROOAH

THE PUNJAB LEGISLATIVE COUNCIL
GURGAON-CUM-HISSAR CASE (M.R.)

HAYAT KHAN (*Petitioner*)

versus

SAHIB DAD KHAN (*Respondent*)

The enquiry in an Election Petition is to be conducted as nearly as possible according to the provisions of the Civil Procedure Code. The Petitioner is not entitled to an adjournment without showing sufficient cause as provided in the Code of Civil Procedure.

The Petitioner in this case failed to summon his witnesses within the proper time, and on the date fixed for hearing applied for adjournment. The learned Commissioners remarked—

"The present enquiry is to be conducted as nearly as possible according to the provisions of the Civil Procedure Code (*vide* Rule 37, Punjab Electoral Rules). The Petitioner is not entitled to have any adjournment without showing sufficient cause (c.f., O. 17, Rule 1, Civil Procedure Code). For reasons given above, we think that the Petitioner has failed to show any such cause and we are, therefore, unable to grant a further adjournment to enable him to produce his evidence. The result is that Petitioner's allegations against the Respondent remain unsubstantiated and the petition must therefore fail. We would accordingly, humbly advise His Excellency the Governor that the petition be dismissed.

The Petitioner to pay the Respondent Rs.100 as costs.

M. V. VHIDE
J. M. MACKAY
D. C. RALLI

ASSAM LEGISLATIVE COUNCIL
HABIBGANJ SOUTH (N.M.R.)

GAJENDRA CHANDRA CHAUDHRI AND OTHERS
(*Petitioners*)

versus

THE HON'BLE RAI P. C. DATTA BAHADUR (*Respondent*)

Whether a case is of a civil or criminal nature does not depend on the tribunal who tries it, or the procedure by which it is tried, but on the nature of the issues. Where the issue is that of criminal nature,

the evidence must be of the same standard as would be required in a criminal case.

Treating being a form of bribery cannot be established unless the intention to influence voting is proved. Conduct of the parties concerned is a good index of such intention.

There is no rule of law requiring a Minister to resign his post before starting his canvassing, nor is it illegal for a Minister to combine canvassing with his official duties.

The evidence of an accomplice should not be accepted without corroboration, not only as to the details of the transaction, but also as to the identity of the accused. This is the meaning of the words "material particulars" occurring in Section 114 of the Indian Evidence Act.

A former statement of an approver may sometimes be accepted by way of corroboration, and such statement is legally admissible to corroborate his testimony at the trial. In the great majority of cases it is only a repetition of tainted evidence, and therefore adding nothing to its value, but if there was evidence or even a suggestion that the evidence given by the witness at the trial was result of recent influence, it would be most important to prove that the witness had made statements to the same effect as his statement at the trial long before the influences relied on by the defence had been brought to bear on him.

The election agent is required to state in the return of election expenses only such unpaid claims as he or the candidate is aware of. The omission of unpaid claims of whose existence the agent and the candidate are unaware, does not vitiate the return.

In this case we are invited to set aside the election of the Hon'ble Rai Promoda Chandra Datta Bahadur, Minister to the Government of Assam, who was returned to the Assam Legislative Council from the South Habibgaj Non-Mohammedan Contsituency in November 1923. The rival portion was the late Babu Harendra Chandra Sinha.

Babu H. C. Sinha died about a month after the election, and the present has been filed by eight electors of the constituency in question, viz., Babu Akhil Chandra Datta and others.

The petition is a lengthy document containing nearly 30 pages of typewritten matter to which a list is annexed of corrupt practices covering 6 sheets of paper.

Issue No. 2—We stay with paragraph 19(6) which runs thus—"That one Babu Gopendra Chandra Choudhry of village Surma, an agent of the said returned candidate, paid a sum of Rs.50 near the Telipara Polling Station on November 21, 1923 to Dina Nath Das and Sanotan Das for payment to seven voters."

The principal witnesses are Krishna Chandra Das and Matilal Das, two of the persons alleged to have been bribed.

After discussing the evidence of these witnesses and their status, etc., the learned Commissioners remarked "These are some of the considerations that have led us to the conclusion that this is not the type of evidence in which accomplice testimony, so notoriously unreliable as a rule, should be accepted without the usual safeguards. What these safeguards are is well-settled (*See* Jenkins C. J. in R. Lalit Mohan Chakravarti, I. L. R. 38 Cal. 559). There must be corroboration not only as to details of the transaction but principally as to the identity of the accused—in this case Gopendra Choudhri. To borrow the language Campbell, J. in R. V. Chutterdhari Singh and others (5 W. R. Cr. 59), "Even when the general credibility of the story is confirmed by overwhelming evidence, it is very unsafe to convict without some corroborative evidence connecting the particular accused with the transaction." This, in fact, is the accepted meaning of the term "material particulars" occurring in Section 114, illustration (*b*) of the Evidence Act, particulars relating not so much to the details of the transaction as to the identity of the accused.

There are several cases in which it has been laid down that the previous statement of an accomplice, whether made at the trial or before the trial, and in whatever shape it comes before the Court, is still only the statement of an accomplice and does not at all improve in value by repetition (*See* R. V. Malap bin Kapana 11 Bom. H. C. R., 196, R. V. Bipin Biswas and others, I. L. R. 10 Cal. 970, and R. V. Nila Kantha, I. L. R. 35 Mad. 247). If we take this extreme view, we must reject as entirely valueless the statement made by Krishna Das and Moti Lal before Binoy Babu; they are of no corroborative force whatever. But without going so far, we may adopt the majority view taken in the Madras case of Muther Kumara Swami Pillai V. R. (I. L. R. 35 Mad. 379), namely, that the former statement of an accomplice may sometimes be admitted by way of corroboration. "I do not think", observes Benson J. in the above case, "there is anything in the Indian Evidence Act to exclude the evidence of accomplices from the plain and express rule in Section 157, nor can it be suggested that "corroborate" is used in Section 157 in a different sense from that in which it is used in illustration (*b*) to Section 114. The former statement of an accomplice is therefore legally admissible to corroborate his testimony at the trial. In the great majority of cases, it would, no doubt, be found to be merely the repetition of tainted evidence, affording no ground for believing it to be true. On the other hand if there was evidence or even suggestion put forward by the defence that the evidence given by the witness at the trial was the result of recent influences brought to bear upon him,

it would be most important to be able to prove that the witness had made statements to the same effect as his evidence at the trial long before the influences relied on by the defence had been brought to bear upon him. "The point to note in the present case is that the earlier statements, like the later, were made after the witness had come within the reach of outside influence. Taking, therefore, even the most liberal view of the law we are unable to hold that the statements to Benoy Babu add anything to the value of the statements in court. We have left out of account for the moment the point that Binoy Babu's notes do not show what statement each witness made to him.

One other point remains to be noted. It may be argued that this is a civil case and that rules of evidence peculiar to criminal law (such as, it may be said, the presumption attaching to accomplice testimony) should not be applied to civil proceedings in which a lower standard of proof suffices. Our answer is that whether a case is of a civil or criminal nature for this purpose does not depend on the nature of the tribunal which tries it, or the procedure by which it is tried but on the nature of the issue. To go no further than the ordinary text books, Kenny, in his outlines of the Criminal Law, dealing with the proposition that a larger minimum of proof is necessary to support an accusation of crime than will suffice when the charge is of civil nature, observes—"It was formerly considered that this higher minimum was required on account of the peculiarities of Criminal Procedure, such for instance, as the impossibility of a new trial, and (in those times) the refusal to allow felons to be defended by counsel and to allow any prisoner to give evidence; and consequently that it was required only in criminal tribunals. This view was still taken in America; but in England it is now generally held that the rule is founded on the very nature of the issue, and therefore applies without distinction of tribunal. Hence of reason be alleged as a defence by an insurance company when sued on a fire policy, or forgery as a defence by a person sued on a promissory note, it cannot be established in these civil actions by any less evidence than would suffice to justify a conviction in a criminal court". It is scarcely necessary to point out that the rules about accomplice testimony which are the same in India as in England, occur in the book under the head of the minimum of proof required in criminal proceedings. The same author in commenting on the presumption of innocence citing Williams *v.* East India Company, (3 East 192), states that the rule holds good not merely in criminal trials but equally in every civil case where any allegation is made that a criminal act has been committed.

In the case before us the allegation is that Gopendra commit-

ted a criminal offence, viz., that of bribery. The evidence produced must therefore be of the same standard as would be required in a criminal case. We find that it is not and we accordingly decide this issue in favour of the Respondent.

We now turn to paragraph 27 of the Election Petition. In this paragraph charges of "treating" have been brought against the Respondent's agents at the polling centres of Bejura, Telipara, Montala, and Chunarughat. No evidence has been produced in respect of Chunarughat. In regard to Bejura, we have the evidence of Babu Mahendra Chandra Das, Babu Ananga Mohan Poddar, Babu Jogendra Chandra Datta Chaudhri and Sarat Das in regard to Telipara, that of Krishna Das and Motilal Das and regard to Montala that of Babu Debendra Nath Bhattacharjya.

First of all as to Bejura. We are prepared to hold on the evidence of the Petitioner's witnesses that some of the Respondent's supporters were provided with refreshments of some kind after they had recorded their votes. The Respondent's agent, Rai Saheb Joy Nath Nandi, admits, in fact, that he kept tobacco in his camp for his workers and that some of the voters also might have come and had an occasional smoke. It is possible that there was more than tobacco. The question, however, is whether there was any intention to influence the voting; unless such a corrupt intention is proved, the act does not amount to treating, strictly so called, which is really a form of bribery as defined in Schedule 5 of the Electoral Rules. The fact that the voters were fed after the voting is, of course, not conclusive as to the absence of a corrupt intention; for it may be argued that the prospect of food is just as potent an influence as food already supplied. The conduct of the parties is, however, a good indication. Now, we have it from Babu Mahendra Chandra Das that the treating was going on at a place about 50 yards from the polling station from at least 1 P.M. till about 5 P.M., quite openly there being no attempt whatever at secrecy, witness Jogendra Choudhri, one of the Petitioner's in the case, who was a polling agent for Harendra Chandra Babu and had access to the Presiding Officer, states that the place where the treating was going on was visible from the school itself. Inspite of this, no one appears to have thought fit to draw the Presiding Officer's attention to the matter and put a stop to it. It may be observed that Babu Mahendra Chandra Das and Babu Ananga Mohan Poddar are both pleaders, and according to both had gone to Bejura that day for the purpose of watching the proceedings and preventing malpractices. And yet, as we have said, the treating that was going on so openly and for so long a period was not brought to the Presiding Officer's attention.

We therefore doubt whether any treating there may have been was such as to amount to bribery as defined in the Electoral Rules.

Issue No. 5.

Issue No. 5 is as follows:—"5 (*a*) did the Respondent conduct his election campaign in the manner alleged in paragraphs 6, 7 and of the Election Petition?

(*b*) If so, can he be said to have used undue influence to secure this election?

The pragraphs referred to in the issue are as follows:—

"6. That the said returned candidate toured about throughout the entire constituency making his camps at Shaistaganj, between June 28 to July 5, 1923, August 25 to September 24, 1923, October 29 to November 30, 1923, and during his tour Government officials serving in the various departments under him accompanied him and that his prolonged stay within the jurisdiction of the said constituency attended with all the prestige and powers of his high position has, it is believed, acted very prejudicially to the interests of the rival candidate.

"7. That the said returned candidate, it is believed, considered it expedient to utilise the influence of his official position as Minister of Assam for the purposes of his candidature and while occasionally travelling in his Railway saloon and at different places in his tour he was accompanied by his nephew and election agent, one Babu Dharma Das Datta, M.A., B.L., and one Babu Khiode Chandra Datta, B.L., Sub-agent, and other influential men of the localities.

"33. That the said returned candidate on the strength of his official position occupied the Circuit House at Habibganj and his agents Dharamdas Datta, Suresh Chandra Palit, Khiod Chandra Datta, Aghur Chandra Ray and many candidates for appointment in the Government service occupied the Circuit House with him and although the said returned candidate occupied the Circuit House from June 28 to July 1, and canvassed voters and yet the expenditure incurred during that period has not been shown in the account. That the said returned candidate's stay in the Circuit House and that of the aforesaid people created an impression in the minds of the voters which greatly affected the election inasmuch as the voters might think that the Government was in a manner supporting the candidature of the said returned candidate who was, then as now, the Minister of Assam."

Before coming to the specific allegations contained in the above paragraphs we may observe generally that the Respondent was in an equivocal position during his election campaign. We are not aware of any rule requiring a Minister to resign office before offering himself as a candidate for re-election. We cannot therefore

say that the Respondent committed any irregularity in choosing to remain in office while conducting his election campaign. In the circumstances it was inevitable that he should, to a certain extent, combine canvassing with official work. It was also inevitable that whenever he went out canvassing he should be attended "with all the prestige and powers of his high official position." We do not see how he could leave these behind so long as he was Minister, any more than he could leave his own shadow behind. And as to the occupation of the Circuit House and the impression it might have created in the minds of the voters that Government was supporting the candidature we may observe that in these days that impression is as likely as not to lose him popular support.

Turning now to the specific allegations on this subject, the only one on which evidence has been adduced is that relating to the Respondent's tour between June 28, 1923 and July 5, 1923. The Petitioners have sought to prove before us that this was purely electioneering tour, with a little official work thrown in, in order to give the appearance of an official tour. The Respondent on the other hand claims that it was undertaken mainly for official work and that incidentally he took advantage of the opportunity to inform his friends and relations in the locality of his desire to stand for re-election. The Deputy Director of Agriculture has been examined by the Respondent for the purpose of proving the nature of the tour. From his evidence I find that as early as April or May 1923 there were proposals for retrenchment in the Agricultural Department in this province. Witness went and saw the Respondent in Shillong and had several discussions with him on the subject. The Respondent apparently desired to carry out the proposals of the Bengal Retrenchment Committee and abolished all the Imperial posts as well as most of the demonstration staff. Till then the department policy had been to increase the demonstration staff. Witness explained to the Respondent why the staff should not be reduced but the Respondent seemed sceptical of the claims of the Department. Witness then suggested, that before coming to any conclusion, the Respondent should see for himself some of the Department's farms and agricultural demonstrations. Witness further suggested that Bejura (in the Habibganj Subdivision) was the place where the work of the Department had made most progress.

We need not go into further details but we are satisfied that the Respondent's tour to Bejura and the neighbourhood was undertaken mainly for the above purpose. It is clear to us from the Deputy Director's evidence, based on his tour diary, that from June 30 to July 4, 1923 he was with the Respondent and

that during that time the Respondent did a good deal of official work in the way of seeing agricultural demonstrations, distributing prizes and certificates in connection with agricultural matters, inquiring into the need for kalazar centres, inspecting schools, etc. Nor can it be said that the tour was not followed by any specific results. At least one useful reform seems to us have owed its origin to this particular tour. We refer to the amalgamation of the Department of Agriculture with that of Co-operative Credit, which may be expected to enable Agricultural Department to work through Co-operative societies instead of through a paid demonstration staff, thereby affecting economy without imparing efficiency. We cannot therefore hold that the tour was fruitless or that it was official only in name; useful official work was done and at least one tangible reform followed as the result. Although therefore the Respondent may have done some canvassing during the tour in question, out of, so to speak, office hours we cannot hold that it was not primarily an official tour. There was therefore nothing wrong in his being accompanied by various Government Officials securing in the departments under him. We decide this issue in favour of the Respondent.

Issue No. 9—It is admitted that some copies of the Respondent's manifesto were issued without the names and addresses of the printer and the publisher. The election agent tells us that as soon as he discovered the omission he stopped further circulation. Exhibits R (3) (1) show that similar mistakes occured in the case of election literature issued on behalf of other candidates as well. There was thus no deliberate omission. And there is no proof that the omission affected the election in any way.

We accordingly decide the issue No. 9 against the Petitioner.

Issue No. 10—Did the irregularities and errors detailed in paragraphs 12, 17, 28 and 29 of the Election Petition occur and are they material or did they materially affect the result of the election?

Paragraph 12 of the Election Petition alleges (1) that vouchers have not been submitted with the return of election expenses; (2) that 100 copies of the Paridarshak were distributed by the election agent and Babu Khiod Chandra Datta, Sub-agent, and the price of these 100 copies has not been shown in the return of expenses; (3) that the railway fares charged are incorrect.

As regards vouchers we find that there are some instances in which vouchers for amounts exceeding Rs.5 have not been submitted. The explanation given on behalf of the Respondent is that the money was spent on railway fares, etc., and that under schedule 3 of the Electoral Rules no vouchers for such items are required. Respondent has however overlooked the next clause in the same

schedule which states that all *sums paid* for which no receipt is attached are to be set out in detail with dates of payment. This has not been done, e.g., item No. 3 to 10, pages 23-25 of the return. There has, therefore, been undoubtedly an irregularity. But we do not think on this account that the return is false in any material particular.

As to the distribution of copies of the Paridarshak there is no evidence against the election agent. Khiod Babu admits, however, that he distributed the copies in order to show up certain persons mentioned in the paper and not for any purpose connected with this election. We have read the issue of the Paridarshak in question and we find that although a connection may be imagined between it and the election in dispute, the connection is so remote as to be negligible. We therefore find that there was no irregularity under this head.

Turning next to the railway fares shown in the return we regret to observe that it was not prepared with the care which we should have expected in a document whose correctness has to be certified by affidavit. In several instances first class railway fare has been shown although it transpires that the Respondent actually travelled second class. There is, however, no serious discrepancy as to the total amount shown under the head of railway fares. How this came about has been explained by the election agent. Apparently he got the Respondent's account of his personal expenditure from Respondent's cook, who only showed the total amount spent on railway fares without giving any further details. The election agent had to guess from the total, the number and the class of tickets purchased on each occasion. He apparently assumed that the Respondent had travelled first class, and so showed the first class fare in the return. The fact, however, was that the Respondent did not travel first class but he and one of his election agents travelled second class, so that there was not one first class ticket but two second class tickets, the total fare shown being correct. It is unnecessary to pursue the subject further. While we are of opinion that even errors of this description should not have occured on a document which requires to be accompanied by a sworn certificate of correctness, we are not prepared to hold that the account is false in a material particular.

As to the Bejura tour, we have already found that it was primarily an official tour, and the Respondent did not have to pay the expense from his own pocket. Those expenses have therefore been rightly omitted from the return. As to the expenditure incurred by his election agent and Khiod Babu we find from the evidence that they went to Bejura on invitation from Rai Saheb

Joy Nath Nandi. It is possible that while there, they did a little canvassing but we are not prepared to hold that they went there for the purpose of canvassing. The Rai Saheb tells us that he invited them to his house because the Respondent was visiting the place and the Rai Saheb wanted him to have some society of the class to which he is accustomed during his stay in the village. We have it from Petitioner's own witness Ramesh Chaudhri that electioneering had not then commenced. This was at the beginning of July, the election being in November 1923. Had the election agent and Khiod Babu gone to Bejura for an electioneering purposes we cannot see any motive for their expenses being omitted from the election account, considering that the law had not prescribed any maximum of election expenditure. We do not therefore find any irregularity in the omission.

As to the printing charge of the pamphlet referred to, we find that the charge is still a disputed one. All the correspondence and discussion on the subject appears to have been carried on by the Press not with the election agent, but with Khiod Babu. There is no evidence that the election agent is required to state only such unpaid claims as he (or the candidate) is aware of. The omission of this disputed charge was not therefore an irregularity.

The result is that we recommend that the petition be dismissed. We also recommend that the Petitioners be offered to pay Rs.1,500 to the Respondent.

B. N. RAW
SARDA PRASAD BAKSI
NIROD RANJAN GUHA

BURMA LEGISLATIVE COUNCIL

HANTHAWADY EAST GENERAL RURAL

MAUNG THWE (*Petitioner*)

versus

MAUNG BA DUN (*Respondent*)

To amount to a corrupt practice, a false statement must relate to the personal conduct and character of a candidate.

Two points only arise in connection with this petition—first whether certain circulars were circulated by the Respondent, and second, whether they contain false statements of fact within the meaning of Schedule 4, part 1, Rule 4.

It was held on facts that the circulars were published by the

Respondent.

The statements complained off were—

"The person elected should conform to the following requirements, viz., that he should be 40 to 55 years of age and abstain from drinking alcoholic liquor, abstain from playing ket, cards, game of kome, and other kinds of gambling; be replete with a sound moral education, wisdom and honor derived from connexions with respectable relatives, and one who strives to perform meritorious deeds; should take an interest in the welfare of his countrymen and be a person of wealth, such as would be adversely affected if taxes on land and immovable property be increased. Then a special note is added. A person who is 25 years of age and who can pay a tax of Rs.5 a year, even if he be of an humble position, a gambler and a drunkard, can stand as a candidate for the Legislative Council." Respondent states that he added this note to prevent any elector being misled into thinking that his previous points were qualifications required by law. None of the three rival candidates were mentioned in the circular.

After a perusal of this circular we cannot find that there is any statement of fact relating to the personal conduct and character of the petitioner, which is false to the knowledge of the person publishing it and, in our opinion, there is no remedy under this rule for statements which are only defamatory by means of subtle innuendo. We doubt whether defamation merely by innuendo can come under this rule at all. The party, of course, if aggrieved, has his ordinary remedy at law.

Other charges were disbelieved on facts.

We accordingly report that the election of Maung Ba Dun is valid.

The Petitioner will pay the Respondent's witnesses' costs and 20 gold Mohars advocate's fee.

GUY RUTLEDGE
P. N. CHARI
B. A. KYAW

THE PUNJAB LEGISLATIVE COUNCIL
HISSAR CASE (N.M.R.)

CHAUDHRI HET RAM (*Petitioner*)

versus

RAI SAHEB CHAUDHRI LAJPAT RAI (*Respondent*)

Unless a person is reported guilty of a corrupt practice he is not disqualified. The person concerned must be reported guilty and it is not enough that the judges stated facts from which his guilt might be inferred.

Rai Saheb Chaudhri Lajpat Rai, vakil, of Hissar, was elected as a member of the Punjab Legislative Council for the Hissar (N.M.) Constituency, on December 16, 1920, but that election was declared to be void in accordance with the report dated May 12, 1921, made by the Commissioners appointed to enquire into a petition questioning the validity of the said election. The Commissioners, while holding that the corrupt practice of bribery, by treating, had been proved against Sissu and Udai Singh, two agents of the returned candidate reported that "no corrupt practice had been proved to have been committed by him (the candidate)," and remarked that they did not see sufficient reason, on the record before them, to justify the conclusion that he was personally concerned in the doings of his agents or was conniving at them.

Chaudhri Het Ram presented this petition challenging the election of the Respondent on grounds among others that the Respondent was ineligible for election, having been found guilty of a corrupt practice, bribery by agent, as defined in Part 1 of Schedule 4, of the Punjab Electoral Rules.

We think that the decision depends entirely on the interpretation which is to be placed on the word "reported" in Rule 5 (3) of the Punjab Electoral Rules, which runs thus—

"If any person is, after an inquiry by Commissioners appointed under any rules under the Act, reported as guilty of a corrupt practice, as defined in Part 1, of Schedule 4, such person shall not be eligible for election for five years."

It is admitted that the report on the previous petition does not, in so many words, find Lajpat Rai guilty of the corrupt practice of treating, but he contends that according to the definition of bribery, given in Schedule 4, Part 1, "a gift, offer or

promise by a candidate or his agent, of any gratification to any person with the object of inducing an elector to vote or to refrain from voting at an election" amounts to a corrupt practice and that the agents of Lajpat Rai having been found guilty of such practice the finding must be taken to amount, in effect, to a finding against Lajpat Rai as well. We are referred to Section 5 of the English Act, i.e., corrupt and Illegal Practices Prevention Act of 1883, which provides that the Election Court shall report to the speaker whether any of the candidates has been guilty by his agents of any corrupt practice in reference to such election and if such report is made the candidate shall not be capable of being elected for seven years for the county of borough for which he was standing. On the analogy of the above provision it is urged that respondent is disqualified, as he has been guilty of a corrupt practice by agent. It need hardly be observed that the analogy from the Statutory provisions of English Law, which have not been incorporated in the Electoral Rules in force in India, cannot be of much help. Moreover, a reference to the provisions of Section 4 of the same Act shows that the English statute places "treating" or undue influence on a footing different to that of other corrupt practices, and under Section 4, at any rate, insists that in order to make a candidate liable for "treating" it must be shown that the Act was done by the candidate himself.

The main point, however, in favour of the Respondent in the present case is that he has not been reported guilty of a corrupt practice by the Commission that tried the first petition and we are not prepared to read into that report anything which apparently it was never meant to convey. We are strengthened in this view by an English decision, Grant *versus* Overseers of Pagham, 47 Law Journal Reports, page 59. In that case it was found that a promise to give an entertainment, consisting of meat and drink, was made to electors on behalf of Grant, to induce them to vote for him, but when it was sought to render him incapable of voting at an election for seven years on that account, the learned judges in the Common Pleas Division, held that "it was not found by such report, either in express words or by necessary inference, that bribery had been committed by or with the knowledge and consent of the said candidate and that therefore he was not disqualified. Rogers in citing this judgment in his standard work on Elections at page 39 (19th edition), observes,—The candidate "must be found to have been guilty, and that it was not enough that the judge stated facts from which his guilt might be inferred." For the purposes of decision in this case all that need be said is that we are clearly of opinion that the previous Commission did not report the Respond-

ent to be guilty of "treating". It held the agents guilty and for that reason the election was avoided. The decision is therefore against the Petitioner.

In our opinion the Respondent has been duly elected.

(A recriminatory petition was filed by the Respondent but was dismissed on facts).

As regards costs we think that the Petitioner should be made to pay the costs of the Respondent which we assess at Rs.500.

ABDUL QADIR
DES RAJ SAHNEY
ABDUL RASHID

NOTE—Mr. Carden Noad, the Assistant Legal Remembrancer represented the Crown at the hearing of this petition.

BURMA LEGISLATIVE COUNCIL
INSEIN (N.M.R.)

P. D. PATEL (*Petitioner*)

versus

1. MAUNG BA GLAY
2. MAUNG KYAW DIN } (*Respondents*)

It does not amount to a corrupt practice for a candidate himself to travel in a taxi generally plied for hire, when it is shown that no voters were conveyed in it.

A ruling of a Returning Officer regarding the validity or invalidity of a nomination paper can be questioned at an election petition, even though no objection was taken at the time of scrutiny.

Where it was found that the Petitioner had reasonable grounds for filing the petition, he was not made to pay the Respondent's costs, even when the petition was dismissed.

The following issues were framed—

1. Was the nomination paper of Respondent No. 2 invalid?
2. If so, has the election been materially affected thereby?
3. Has the first Respondent been guilty of corrupt practices as alleged?
4. Did the Presiding Officer at Insein Polling Station fail to allow intending voters to vote or to tender their votes?
5. Did the number of tokens in the ballot boxes exceed the number of voters who voted?
6. Is the election invalid by reason of all or any of these irregularities?

As regards the fourth issue we may mention that the Peti-

tioner at the hearing applied to amend paragraph 7 by making it read: "The Presiding Officers at Insein and Hmawbi Polling Stations." We disallowed the proposed amendment as it would materially widen the scope of the charges against the first Respondent and tend to prejudice him in meeting the Petitioner's case.

From evidence it is perfectly clear that there is no suggestion that the Presiding Officer failed to do his duty. The fourth issue is therefore decided in the negative.

Issue No. 5—The Returning Officer, in his letter to the Reforms Secretary, does show that there were 1,636 tokens in the ballot boxes and that, apparently only 1, 611 tokens were issued to voters. The only way in which he can account for the discrepancy is by incorrect counting of the return tokens by the Presiding Officers. There is, however, no evidence raising even a suspicion of stuffing of the ballot boxes. We may mention that the only station, which at the begining of the case was impugned by the Petitioner—Dabein—shows a correct return of the tokens received and the persons voting. In the absence of some evidence raising the presumption of stuffing or misconduct in favour of some particular candidate, we cannot attach any importance to the discrepancy.

We accordingly, though we must answer the first issue in the affirmative, do not think that it in any way affects the validity of the election.

Issue No. 3—The Petitioner charges the Respondent No. 1 with hiring a taxi for the purpose of the election on the day of the election. On the evidence it is clearly established that the Respondent did use a hired vehicle on the election day. It is not alleged by the Petitioner that the Respondent carried any voters to the poll in this taxi but merely went from station to station to see how the poll was proceeding. If the case stopped there, we would not have put a strict and technical construction upon the words "for the purposes of the election". To lay down that a candidate, who has not got a car of his own, is committing a corrupt practice, in endeavouring to visit the polling stations in a big and scattered constituency by the only means of transit at his disposal, would be, in our opinion, destroying the spirit through devotion to the letter. Would it be a corrupt practice for a candidate to ride on a vehicle where there is a regularly established system of motor busses? Would it be a corrupt practice for him to pay an anna fare for getting from one side of the river to the other in a ferry? Unfourtunately for the Respondent No. 1 the case does not stop here. His election agent, Ba Hlaing, has deposed that Respondent has a car of his own, that he placed this car at his disposal whilst

working for him at Insein. Under these circumstances we consider that the use of a taxi by Respondent No. 1 and thus letting his own private car for ordinary election purposes is a contravention of the rules.

On evidence it was held that a taxi was employed to convey voters from Hlegu to Dabein.

It has not been proved that the Respondent No. 1 or his agent fired this vehicle. For the purposes of Schedule 4, Part 2, Rule 5, we hold that there has been a hiring of a vehicle usually kept for letting on hire or for the conveyance of passengers on hire, and that this is therefore a corrupt practice even though it has not been brought home to the candidate or his election agent.

In order to invalidate the election, it must be shown that the two acts materially affected the result of the election. From the evidence not more than 13 to 17 voters were carried by the taxi from Hlegu to Dabein. The Respondent only got 27 votes at Dabein. Supposing we deducted 15 votes from the 27 given at Dabein, this, by itself, would have no material affect upon the election, as the Respondent's majority was 111.

With regard to the Respondent allowing his private car to be free to work at the Insein Polling Station, we have very little to go upon as to the number of voters which is brought to the poll. Respondent No. 1 got 62 votes at Insein. Even if we assume that it carried one half of these, its plying even with the other car at Dabein would not materially affect the election.

Issue No. 1—It was found that the name of the proposer Maung Gyi of Respondent No. 2 was not entered in the list of voters.

There is no question that Maung Gyi ought to have been on the voter's list. On the facts proved before us we are clearly of opinion that he was not on it. We are clearly of opinion that the ruling of the Returning Officer under the Burma Electoral Rules, unlike that under the English Law, is not final but can be questioned on petition, even though no objection was taken at the time of the scrutiny.

We are consequently of opinion that the nomination of Respondent No. 2 was invalid.

Issue No. 2—On evidence we are of opinion that if Maung Kyaw Din had not stood, the majority of the votes given for him at Hlesik and Tantabin would have been given for the Respondent. Consequently even though we think that the majority of votes given for Maung Kyaw Din at Insein, Hmawbi, Taikkyi, and Okkan would, in case he had not stood, have been given to the Petitioner, considering the Petitioner's majority, this would not have affected

the result of the election, not even though we deducted 46 votes on the corrupt practice. And it must be borne in mind that it is very problemitical that votes given for Maung Kyaw Din, out of respect for his father or his family's influence, would have been given to the Petitioner—who, after all, is a stranger to many of them—merely on Maung Kyaw Din's advice.

We accordingly decide the second issue in the negative.

We report that Maung Be Glay has been guilty of a corrupt practice, namely, in hiring a taxi motor-car while putting his private car at the disposal of his election agent who was working at the election, but as he did not convey any voters in this vehicle, and as the election rules have been so recently enacted that a full knowledge of their consequences has not become general, we strongly recommend that the local government should, under Rule 5 of the electoral rules, Sub-rule 4 remove the disqualification.

We accordingly report that the election is valid.

On the question of costs. In consideration of the fact that there were irregularities and breaches of the provisions laid down in the rules and regulations, we are of opinion that the Petitioner had some reasonable grounds for filing the petition and trying to have the election of the Respondent No. 1 set aside, and in this view of the matter we direct that each party bear his own costs.

GUY RUTLEDGE
P. N. CHARI
BA KYAW

BENGAL LEGISLATIVE COUNCIL
JESSOR NORTH (M.R.)

KHAN BAHADUR ABDUS SALAM (*Petitioner*)

versus

MAULVI RAFIUDDIN AHMAD (*Respondent*)

A ballot paper must be rejected which has not on its back the official mark. But where by mistake a wrong official mark (the seal of the Indian Legislative Assembly) was used, it was held that a recognisable official mark being present on the ballot papers, the same could not be rejected for want of the official mark.

The allegation of the Petitioner was that on 76 ballot papers the votes were recorded in his favour but they were improperly rejected by the Returning Officer on the ground that they were not marked with the secret official seal indicative of the Bengal Legis-

lative Council. It was asserted and it has not been denied that by some mistake or other these ballot papers had been stamped with the official secret seal indicative of the Legislative Assembly instead of the official secret seal indicative of the Bengal Legislative Council.

The Election Petition must be decided on the issue whether the ballot papers stamped with the official seal indicative of the Legislative Assembly were rightly rejected or not. The learned vakil for the Respondent contends that they were rightly rejected because the proper seal was not used. There is a prayer in the alternative that a fresh election might be ordered. The election did take place and the only question before us is which of the two candidates had a majority of votes. We cannot therefore direct a fresh election.

For the Petitioner, Halsbury's Laws of England, vol. 12, page 317 was quoted. The case of Cirencester, 4 O'M. and H. 195, is the case on the point. It was held that where the evidence is that the Presiding Officer has intended to make and has in fact made what fairly looked at indicates a recognisable official mark on the back of the ballot paper, the ballot paper is not to be rejected for want of the official mark. As observed by the learned vakil for the Respondent, this does not help us. Then the question was whether any official mark was used at all. Here we have a case where a wrong official mark was used. There is no guide for us in the English cases for apparently no such case ever occurred in England. We propose to follow the rule of equity and good conscience. The law that a ballot paper must be rejected which has not on its back the official mark was designed to set at rest the question whether the particular ballot paper was issued by the polling officer. Here there is no doubt that these ballot papers were stamped by the polling officer with a wrong official seal and issued to the voters. We hold that votes recorded in these ballot papers in the Petitioner's favour should be counted for the Petitioner unless otherwise invalid. We have carefully examined the rejected ballot papers and we find that there was a clear majority in favour of the Petitioner.

G. N. Roy
G. B. Mumford
Girindra Nath Mukerji

THE PUNJAB LEGISLATIVE COUNCIL
KANGRA CUM GURDASPUR (M.R.)

MUHAMMAD FAZAL KHAN (*Petitioner*)

versus

CHAUDHRI ALI AKBAR (*Respondent*)

One M was a near relation of the Respondent. M worked for the Respondent on the polling day. M was held to be an agent of the Respondent within the meaning of election law.

Where about 80 voters were fed with 'Pulao' on the day of the election by M a near relation of the Respondent, who was held to be an agent, it was held that this feeding amounted to the corrupt practice of treating.

Intention has in cases of treating to be judged from the surrounding circumstances. Following Blackburn J. in the Stalebridge case, it was held that "the question whether or no there is a corrupt giving of meat and drink, like every other question of intention, depend upon what was done, and to a great extent the extent to which it was done, the manner and the way."

Where there are three candidates at an election, and the successful candidate is unseated on account of his election having been found vitiated on account of corrupt practices, the Petitioner does not necessarily get the seat. The votes cast in favour of the unseated candidate cannot be said to have been cast away, and a fresh election becomes necessary.

Further and better particulars can be permitted to be filed when some particulars have been given with the petition.

It was proved that one Umardin voted for a voter named Abdul Ghani at the Dina Nagar Polling Station.

The Respondent admits in his statement that he was present at Dina Nagar Polling Station on the polling day, but denies that he talked to Umardin or to any voters—except a few respectable gentlemen, such as ziladars, etc. But his statement also shows that he had no polling agent at Dina Nagar, and under the circumstances it seems by no means improbable that he was taking personal interest in the voters and was directing or taking them to the polling enclosure, as deposed to by the Petitioner's witnesses. It is significant that the Respondent had not the courage to call independent and disinterested witnesses like the presiding or polling officers to contradict the testimony of petitioner's witnesses. We might have felt some hesitation in accepting the Petitioner's evidence on this point if the Respondent had made out any *prima facie*

ground for looking upon it with suspicion. Under the circumstances, we see no justification for disbelieving the latter evidence, and must hold the charge to be proved. The 'personation' having been procured by the Respondent himself, the 'corrupt practice' falls under Part 1 of Schedule 5 of the Electoral Rules.

On the second charge of 'treating' also, we think that the Petitioner must succeed. The Petitioner's evidence shows that Alam Khan, his election agent, complained about 'treating' while it was in progress, to the Presiding Officer at the Batala Polling Station, on the polling day. The Presiding Officer deputed S. Amar Singh Junior Presiding Officer to go to the spot at once and inquire into the matter. S. Amar Singh accordingly went to the garden, a couple of furlongs from the polling station, and found that about 80 persons were being feasted with 'pulao'. The number was probably larger, for several persons were seen running away when S. Amar Singh arrived. On inquiry S. Amar Singh found that most of the persons were voters of the Respondent. A few stated that they were non-voters. Three or four persons were pointed out as voters of the Petitioner, but the statement was contradicted on the spot by Alam Khan, who was with S. Amar Singh. One Ali Muhammad, whose niece is married to Munir, son of Respondent, was present and stated that he had made the arrangement for feeding men of his brotherhood as it would be a shame, if he being a leading man of the town, had not done so. Ali Ahmad subsequently put in an application to the same effect in writing to explain his position. S. Amar Singh also made a report in writing soon afterwards as directed by the Presiding Officer, on the basis of notes taken down by him on the spot, and his report has been put in evidence. Complaint about treating was promptly made on the spot, and witnesses have deposed to what they saw at or about the time. The evidence of S. Amar Singh and the witnesses prove beyond doubt that some 100 or 150 persons were fed with 'pulao' in a garden not far from the polling station, and that the persons fed were mostly voters of the Respondent. Their evidence further shows that Ali Ahmad, a relation of the Respondent, admitted on the spot that the feast was arranged by him and Munir, son of the Respondent, who is married to a niece of Muhammad, was also present, and was one of the persons in charge of the food arrangements. The term agent has a wide meaning in Election Law and the relationship has to be often inferred from the facts and circumstances of the case (4 O'M. and H. at page 10).

In view of the near relationship and the active interest he was taking in the polling, we think Muhammad Munir must be held to be an 'agent' of the Respondent within the meaning of above-

mentioned rule (cf., 1 I. E. P. 105 at page 108). Ali Ahmad is related to Muhammad Munir, and, it may be presumed, in the circumstances of the case, that he was feeding the visitors with the consent—or at any rate connivance of Muhammad Munir.

The last point for decision is whether the voters were fed with the intention of influencing their votes. There is no direct evidence on the point, but the intention in such cases has to be generally gathered from the surrounding circumstances. As was remarked by Blackburn J. in the Stalebridge case, "the question whether or no there is corrupt giving of meat and drink must, like every other question of intention, depend upon what was done, the manner and the way" (1 O'M. and H. 73). Similarly, in the Hissar case of 1920, it was held that "when nearly one hundred voters from one village were fed on the polling day by two men intimately connected with the Respondent and acting on his behalf the inference is clear that they were fed in order to induce them to vote for the Respondent. The effort to win votes may have succeeded in some cases and failed in others, but that is immaterial. The corrupt motive is shown by the circumstances proved " (1 I. E. P. page 105 at page 113). The facts of the present case are very similar. Here also about 100 or 159 voters of the Respondent were fed on the polling day while the polling was in progress by a person related to the Respondent and with the connivance of his son, whom we have held to his 'agent' for the purposes of the election. The inference seems irresistible that the feast was given with the object of inducing the persons fed to vote for the Respondent or as reward for their having voted for him. We accordingly find that Munir, an agent of the Respondent was guilty of the corrupt practice of 'bribery' in the form of 'treating' (*vide* definition of bribery in Part 1 of Schedule 5 and explanation to Rule 44 of the Punjab Electoral Rules).

There is no evidence to show whether the treating was done with the consent or connivance of the Respondent. He was admittedly not at Batala on the polling day, and in the absence of such evidence he cannot be personally held guilty of this offence. However even treating by a third person with the connivance of an agent of a candidate would fall within the definition of bribery and would be sufficient to avoid his election. But there is no evidence before us to show that the Respondent had taken all reasonable means for preventing the commission of the corrupt practice and that it was committed, contrary to his orders. As many as 100 or 150 voters were treated, and, under the circumstances, we do not think that we would be justified in holding that the corrupt practice was of a trivial, unimportant or limited character. We accord-

ingly hold that the corrupt practice of 'treating' which has been proved in this case falls under Rule 44(*b*) and renders the election of the returned candidate void.

We now come to the recriminatory petition of the Respondent. No serious attempt has been made to substantiate these charges and we do not believe the evidence produced. The recriminatory petition was rejected on facts.

The Petitioner has prayed that he should be declared "duly elected" inasmuch as he secured the next highest number of votes; but we do not think that he is entitled to such declaration. Although the effect of the charges against the Respondent Ali Akbar is to render his election void, it cannot be said with any certainty whether the Petitioner or the third candidate would have been elected if Ali Akbar had been out of the contest. The votes given to Ali Akbar cannot be said to have been merely thrown away (cf., Rogers on Elections, volume 2, edition of 1918, page 130; also 1 I. E. P., page 217 at page 221). As a result a fresh election will be necessary.

The Respondent should bear the Petitioner's costs which we assess at Rs. 600.

M. V. BHIDE
J. M. MACKAY
D. C. RALLI

ANNEXURE

A preliminary point was raised in this case by the Respondent to the effect that both the petition and the list of particulars attached thereto are vague and indefinite, and, therefore, asks us to dismiss the petition. The Petitioner whilst admitting that the particulars were not such as were required by Rule 33(1) and (2) says that we have power under Rule 33(3) to allow him to furnish further and better particulars. The Respondent objected to any opportunity being given to the Petitioner. We framed a preliminary issue and have heard counsel on both sides at length. It was contended by the Petitioner's counsel that if we now decide that no particulars whatsoever have been given in the petition or the list, it would be tantamount to our going behind the order of the Governor who alone was competent to dismiss the petition under Rule 36(1), if he found that the provisions of Rule 33 were not complied with and he urged that we have no such power. The question does not arise in this case. We consider that Rule 33(3)(2) gives us power to call for further and better particulars if we so desire. This power, however, refers only to the parti-

culars and not to the petition. The present Rule is 33(1) and (2) is different to the old Rule 31, and the present rule is clearer and more stringent and requires that the petition shall be accompanied by a list "setting forth full particulars of any corrupt practice which the Petitioner alleges, including as full a statement as possible as to the names of the parties alleged to have committed any corrupt practice and the date and place of the Commsision of each such practice". This rule, therefore, gives a very clear indication as to what a petitioner is required to do. And this is what it should be, for no person should be allowed to deliver particulars which contain nothing but the name of the candidate and the character of the offence suggested and leave everything else blank and open to attempt under them to fish out some possible material from which the blank may be filled up. To allow this would be an abuse of procedure. A similar question was raised in Sheikhupura case reported in Hammond's I. E. P., vol. 1, page 197, and it was decided therein that the Commissioners had no power to allow the amendment of the petition as there was no rule to that effect, and that Rule 33 (now Rule 37), which directed the Commissioners, to inquire into the petition as nearly as may be in accordance with procedure applicable under the Code of Civil Procedure, 1908, to the trial of suits referred only to the conduct of the enquiry and not to the petition. This was under the old Rule 31 but as already stated, Rule 33(3) now gives the Commissioners power to allow amendment. As this power or discretion refers only to the particulars, we are in agreement with the argument of the Respondent's counsel that if no particulars are delivered at all, then the discretion ought not to be exercised. We have carefully considered the list of particulars in the light of the above remarks, and we have no hesitation in saying that no particulars, as required by Rule 33(2), have been given with regard to charges contained in paragraphs 2 to 4 and 6 and 7 of the list of particulars, and we therefore refuse to amend them. Paragraphs 1 and 5 of the list stand on slightly better footing, as there are some definite particulars, though not as full as required by Rule 33(3). We would therefore allow one opportunity to the Petitioner to deliver further and better particulars with regard to the charges contained in paragraphs 1 and 5 on payment of Rs.100 as costs to the Respondent.

UNITED PROVINCES LEGISLATIVE COUNCIL
KHERI AND SITAPORE (M.R.)

THAKUR NAWAB ALI KHAN (*Petitioner*)

versus

QAZI HABIB ASHRAF (*Respondent*)

A mere appeal to the religious prejudices of voters does not amount to undue influence, unless there is something to show that the voters would render themselves objects of divine displeasure or spiritual censure.

Ex. 1 opens with four lines of Urdu poetry—

"Yeh tisali election ka jo sikka aj jari hai
Khara khota parakh lo kon is men charyari hai
Habib Ashraf hai nam uska chuna hai quam ne jisko
Bas ab dekho Khilafat ka woh hi inmen se hami hai."

These lines appear to mean that at this time of election choice should be made between a genuine and the spurious candidates. A double meaning is contained in the word "charyari" which means—

(1) A Baluchi coin of pure metal.

(2) A Sunni or believer in the four Khalifas.

The electors are enjoined to elect Habib Ashraf because he supported the Khilafat.

The three candidates are then mentioned, and it is pointed out that two are Shiahs (Petitioner being also reported by some to be a Christian), whereas Respondent No. 1 is a Shiah.

It was argued for the Petitioner that this Ex. 1 comes within the definition of undue influence in Schedule 5, part 1, Rule 2, and particularly explanation (1) (*b*) which states "induces or attempts to induce a candidate or voter to believe that he or any person in whom he is interested will become or will be rendered an object of divine displeasure or spiritual censure". These words are taken from the English Act of 1883 (Hammond's "Indian Electioneering", page 102) and cases from County Meath, Ireland, in 1892, quoted on pages 103 and 104 of Hammond shows what is ment—"Parnellism is nothing better than heresay in its teaching; it is immoral and condemned by the Irish Bishop of the Catholic Church, and I would approach the death-bed of a profligate and drunkard with greater confidence than that of a dying Parnellite. Any woman that sympathises with Parnellism is worse than an abandoned woman." These words in the pastoral address of a Bishop were held to amount to a threat of the nature prohibited by

law

In Ex. 1 there is no threat or suggestion that the voters would render themselves "objects of divine displeasure or spiritual censure" if they did not vote for Respondent No. 1. No doubt an appeal is made to their religious prejudices, but this does not amount to undue influence. In the Darbhanga case, there was a distinct threat—"If you give your vote to him, it will be for your benefit, if not, you will commit a sin and incur Mr. Gandhi's displeasure and curse", and it was held that "since Mr. Gandhi is admittedly regarded by the electors as a Mahatma, such representation if made by or on behalf of the Respondent would amount to fraud and undue influence."

Our finding is that Ex. 1 does not amount to undue influence.

The remaining charges of personation, etc., were disbelieved on facts and evidence.

Petition dismissed with costs assessed at Rs.600.

E. BENNET
H. J. COLLISTER
J. M. BASU

MADRAS LEGISLATIVE COUNCIL
MADURA AND TRICHINOPALI CUM SRIRANGAM (M.U.)

V. S. MUHAMMAD IBRAHIM (*Petitioner*)

versus

1. ABBAS ALI KHAN
2. A. P. SAYID IBRAHIM } (*Respondents*)

A ballot paper does not include its counterfoil.

When the Petitioner made charges which he could not substantiate, to a great extent, and irregularities were proved in the conduct of the election and the Commissioners were not able to say that the petition was in public interest, the Petitioner was not held liable for costs of the Respondent, even though the petition was dismissed.

When a party claims that a tendered vote should be substituted for an accepted vote, it lies heavily on him to prove his contention, and the evidence must be enough to satisfy the court that a real error has been committed.

Putting of thumb impression of voters on ballot papers amounts to a violation of the secrecy of the ballot as such impressions are marks by which the voter can be identified. The ease or difficulty with which such identification may be made is not a factor for consideration.

The chief ground in this petition for setting aside the election of the first Respondent are irregularities in the taking of votes at the polling stations, and irregularities in counting them afterwards.

The election return showed 492 votes for the first Respondent and 480 for the Petitioner. We held a general recount which showed 493 for the first Respondent and 480 for the Petitioner. There are two votes admitted to have been cast in the names of persons who are dead. These must be struck out.

The first objection taken by the Petitioner is that several votes were disallowed because the counterfoils of the ballot papers were not detached from them. The Returning Officer does not seem to have proceeded on any principle in this matter. We find that some ballot papers with counterfoils attached, counted as valid and others rejected as invalid. The reason for the rejection was, we presume, that the voter could be identified from the counterfoil attached to his ballot paper since Regulation 47 of the Madras Electoral Regulations says that the ballot paper should be rejected if it bears any mark by which the elector can be identified. What the ballot paper is, is not as clearly set out in these rules as it might be; for example in Regulation 21(1) it is laid down that the 'ballot paper' shall be in form 3, which comprises both the counterfoil, while in Clause (2) of the same rule, at the beginning 'ballot paper' is used to include counterfoil, while at the end 'counterfoil' is distinguished from ballot paper. But Regulation 47 itself quite clear that 'ballot paper' as used in that regulation does not include the counterfoil; because otherwise, since the counterfoil should, under the Regulation 22, always contain the name and number of the elector by which he can be identified, the rule would be unintelligible if 'ballot paper' included 'counterfoil'. What we have to see is whether on the wording of Regulation 47 there is on these ballot papers, that is counterfoils, any mark by which the elector can be identified. And we find none. We cannot proceed in deciding a matter of this kind on any general theory as to what the regulations are designed to effect in order to ensure the secrecy of the ballot. Government has set down by regulations the limit within which such secrecy is to be preserved. What we have to decide is whether or not these regulations have been broken. We find that in these cases there is no breach of the regulation. In Woodward *v.* Sarsons, 10 Common Pleas 733, it was held that voting papers put into ballot boxes wrapped up in declarations of inability to write by which obviously the voters might have been identified, were not invalid. We hold therefore that these votes were perfectly valid. They are ten in number and are all in favour of the Petitioner.

There were nine tendered votes. Only seven tendered ballot papers were forthcoming. But all the tendered counterfoils are here. The Petitioner claims three out of these nine in his favour as being valid votes, in regard to tendered votes generally, we hold that when a party claims that a tendered vote should be substituted for an accepted vote, it lies heavily on him to prove the contention, and that the evidence must be enough to satisfy the court that a real error has been committed.

On evidence the Petitioner got one additional vote on this count.

The next point is that the thumb impressions of two illiterate voters who voted for petitioner were taken on their ballot papers, the counterfoils. These were rejected by the Returning Officer, and not counted. The evidence shows that the taking of thumb impressions was most probably at the instance of polling officers, who appear not to have been sufficiently acquainted with the regulations. One of them went even so far as to take a vote outside the polling booth altogether. We cannot say that all these impressions are not marks by which the voters can be identified. The ease or difficulty with which such identification may be made is not in our opinion a factor for consideration. Under Rule 47 these votes were rightly rejected. If the result of the election was going to be materially affected by the taking of these thumb impressions we should have had to set aside the election. But even allowing these votes in favour of the Petitioner, it would still leave him in a minority of two. The result of the election is therefore not materially affected by such irregularities.

As regards the allegation that certain polling agents may have voted twice, once in their own ward, and once in the ward where their certificates allowed them to vote, we regard the allegation as too vague to justify a general scrutiny in order to see whether there is any substance in the allegation. If the Petitioner was relying on any definite information he ought at least to have known and mentioned the name of the agents who voted twice, and thus laid the foundation for a genearl scrutiny.

The net result if that the election of the first Respondent is sustained and the petition is dismissed.

We have considered the question of costs, and we are impressed by the fact that the Petitioner has not made any charges which he has failed in a large measure to substantiate, and in view of the proved irregularities in the conduct of the election we are not able to show that it was not in the public interest that this petition should have been advanced and heard. We are also impressed with the exceedingly small difference that there is in the number of

votes cast for the Petitioner and for the first Respondent. In these circumstances we direct that each party shall pay his own costs.

E. H. WALLACE
V. V. SRINIVASA AYYANGAR
P. SUBBIAH MUDALIYAR

BURMA LEGISLATIVE COUNCIL
MAGWE WEST CASE

MAUNG THAN ZIN (*Petitioner*)

versus

W. S. LAMB AND OTHERS (*Respondents*)

Permission to withdraw a petition will be granted when it is shown that the withdrawal has not been induced by any bargain or arrangement between the parties.

When this petition came up for hearing the learned advocate for the Petitioner applied for leave to withdraw the petition. On that, according to Sub-rule (3) of Rule 37, we fixed another date for the hearing of the application for leave to withdraw. We directed the application to be advertised in the Burma Gazette and for notice by registered post to be served upon other respondents. This has been duly done.

On the last occasion both the learned advocates for the Petitioner and for the first Respondent on behalf of their clients affirmed that the withdawal had not been induced by any bargain or arrangement between the parties. From the surrounding circumstances of the case, we are perfectly satisfied that no such bargain or inducement could have been entered into in the matter, and we accordingly allow the petition to be withdrawn.

As regards costs, we order the Petitioner to pay to the first Respondent all the witnesses' costs and 20 gold mohurs in respect of advocate's fee.

GUY RUTLEDGE
P. N. CHARI
BA KYAW

BENGAL LEGISLATIVE COUNCIL
MIDNAPORE SOUTH (N.M.R.)
RAI PRASANNA KUMAR DAS GUPTA BAHADUR
(*Petitioner*)

versus

MR. CHITTARANJAN DAS (*Respondent*)

Omission to fill the candidate's electoral number on the nomination paper is not a vital defect so as to make the nomination invalid.

An elector to be entitled to file a petition must be an elector of the particular constituency to which the election relates.

A candidate whose nomination paper is rejected, and withdraws his deposit afterwards, is all the same a candidate and is entitled to file an election petition.

The nomination paper is not to be filled in at any particular time.

On the date of the scrutiny the Returning Officer rejected the nomination paper of the Petitioner on the ground that the omission of the Petitioner to fill in the number of the candidate in the Electoral Roll was a vital defect. He found that the nomination of Mr. C. R. Das was in order, and declared him duly elected.

The Petitioner filed this Election Petition averring that the defect in his nomination paper was only technical and pleading that, as Mr. C. R. Das could not have signed his declaration at the foot of the nomination paper after the nomination had been duly proposed and seconded as required by law, and that as his signature must have been put on blank paper or forged, the nomination and election of Mr. C. R. Das may be declared to have been duly nominated and elected for the constituency.

During the trial Counsel for the Petitioner offered to accept the statement of Mr. C. R. Das. Mr. C. R. Das filed a written statement of facts signed by him. Mr. C. R. Das stated that he left for Coconada on December 20, 1923, but that before he left Babus Birendra Nath Samsal and Mahendra Nath Maiti had approached him and proposed to nominate him from Midnapore South Non-Muhammedan Constituency and that the day before he left, he accepted the proposal and signed some nomination papers in all its details including the date which was to be the date appointed for the nomination, and that in pursuance of this arrangement Babu Birendra Nath Samsal filled up the nomination form and signed

in the place set apart for the signature of the proposer, and Babu Mahendra Nath Maiti put his signature in the place meant for the signature of the seconder. Mr. C. R. Das stated also that he left instructions to appoint Babu Birendra Nath Samsal or himself (if Babu Birendra Nath Samsal was unwilling to be the agent) as his election agent and deliver the same to the Returning Officer, after putting his signature under the clause "I hereby declare that I have appointed to be my election agent," and that Babu Birendra Nath Samsal put in the word "myself" in pursuance of these instructions. The statement of fact was accepted by the Petitioner.

We proceed to consider the merits of the case. The facts are not disputed now. The only question being whether the nominations of the two candidates were good or bad, we did not think it necessary to draw up any issues. The decision turns upon the interpretation of Rule 11(3) of the Bengal Electoral Rules. It runs as follows:—

"On or before the date so appointed for the nomination of candidates, each candidate shall either in person or by his proposer and seconder together between the hours of eleven o'clock in the forenoon and three o'clock in the afternoon, deliver to the Returning Officer a nomination paper completed in the form prescribed in the Schedule III and subscribed by the candidate himself as proposer and seconder, whose names are registered on the Electoral Roll of the constituency.

The learned Counsel appearing for the Respondent has taken two legal objections to the petition of Rai Bahadur. It appears that after the nomination of the Petitioner was rejected, his election agents withdrew the deposit which has to be made under Rule 12. The contention is that Rai Bahadur accepted the decision of the Returning Officer and by withdrawing the deposit he is no longer a candidate. Under Rule 32 an Election Petition can be filed by any candidate or elector. It was argued that the word "elector" means an elector of the constituency since it would be ridiculous for an elector in one constituency to complain about any irregularity in another constituency. We are disposed to agree but we may point out that the rule as framed does not place any limitation on the word elector. The Rai Bahadur is still a candidate according to the definition of the candidate in Rule 30(*b*) inasmuch as he claims that he was duly nominated and that his nomination paper was improperly rejected. It may be again that the Petitioner accepted at first the decision of the Returning Officer. If on consideration, or under legal advice he thought that the decision was wrong he cannot be precluded from questioning the election

merely because of the fact that the deposit was returned to him. There is no question of estopel. We are considering his position on January 4, 1924. The deposit was there on that date and if it be found that he was duly nominated the case would be met by the Rai Bahadur redepositing the money. We hold that the petition is maintainable.

The second objection is that the nomination paper of Rai Bahadur is invalid on its face. There are four defects in it. The constituency for which the candidate was nominated is mentioned as "South Midnapore" while it should be "Midnapore South Non-Muhammedan". The constituency in which the Rai Bahadur was registered as an elector is described as "Munshiganj (Dacca) Rural" while it should be "Decca Rural Non-Muhammedan". The name of the proposer is Srinath Chandra Das. It is put down as Srinath Chandra Das, and he signed as Srinath Das. The fourth defect is the omission of the Electoral Roll number of the candidate. The Returning Officer considered the first three defects technical, but the fourth vital.

The mistakes in the description of the constituencies are slight and we do not think that they could possibly mislead anyone. In respect of third defect the learned Counsel has quoted the case of Moorhouse *v.* Linney (15 Q. B. D., page 273), where a nomination paper was held to be bad, by reason of the fact, that the elector subscribed as Charles Arthur Burman when he was entered on the register as Charles Burman. It was held that the discrepancy suggested that there might be two persons, one called Charles Burman and another called Charles Arthur Burman. The statute it was said however in Bowden *v.* Besby (21 Q. B. D., page 309), does not require that the subscription shall identically correspond with the entries of the names on the register. In the present case the identity of the proposer with the name on the Electoral Roll is not questioned. A Bengali with the name Srinath Chandra Das might sign himself as Srinath Das, or Srinath Chandra Das. The defect is very technical and carries no weight.

We have to see whther the omission of the Electoral Roll number of the Petitioner is fatal or not. The learned Counsel for the Respondent quoted the case of Monks *v.* Jackson (1 C. P. D., page 683), for the argument that the statute must be followed strictly. The statute said that the nomination paper must be delivered by the candidate himself or by his proposer or seconder. It was held that the delivery by an agent therefore, will not do. In the present case the dispute is over the question whether it is essential that the form in Schedule III should be filled up in every particular at the time of delivery. The case of Hobbs *v.* Mosey (1 K. B. D., page

74), was quoted for the principal, that the court had to decide on the validity of the nomination paper itself. The English Law is that the decision of the Returning Officer if disallowing the objection is final, but it is not so, if the objection is allowed. It is subjected to reversal on questioning the election (Parker 250 page). The Ballot Act lays down that no election shall be declared invalid by reason of non-compliance with the rules or any mistake in the use of the forms in the schedule, if it appears to the tribunal that the election was conducted in accordance with the principles laid down in the body of the Act. Commentators seem to agree that mistakes in the use of forms will not invalidate an election.

Turning to our law it has been recently held that the filling up of the date against the candidate's name is not essential (Calcutta South, 1924). The case of the Presidency Division (also recently decided), was referred to for the proposition that the nomination paper must be complete on the day of the nomination. As we read that decision the principle laid down was that the candidate must be eligible to stand as a candidate. Only he did not know his Electoral Roll number. In the rules of 1920 it was not necessary to give this number. He procured the roll number and the Returning Officer was placed in possession of that fact before the scrutiny. It may be mentioned that no objection on this point was taken on the side of the Respondent at the scrutiny. The object of the information required to be furnished in the form is to allow the elector or the constituency an opportunity of testing whether the candidate is duly qualified elector. In this particular case we find that had the descriptions referred in the Rule 11(7) been affixed in a conspicuous place by the Returning Officer not only the necessary roll, but the name of the candidate (a Rai Bahadur) therein could have been traced therefrom with no more inquiry than would have been necessary, if the nomination paper had been beyond all criticism. We are inclined to hold that, in the particular circumstances of the present case the Petitioner should be held to have complied with the provisions as to the completion of the nomination form.

Coming to the case to the Respondent it is pointed out by the learned Counsel that the rules do not lay down how the form is to be completed, and, in fact, in the rules the subscription of the candidate as assenting to the nomination comes before the subscription of the proposer and the seconder. It is urged, on the other hand, that the whole scheme is that the nomination should be in writing and be first signed by the proposer and the seconder, and then assented by the candidate. It is argued that a verbal arrangement is not enough and, if allowed to prevail, might lead to absurdities. It

does not appear that the nomination paper has to be filled in at any particular time. It may be filled days before the nomination and it may even be presented to the Returning Officer before the date fixed for the nomination of the candidate. So that if Mr. C. R. Das and his proposer and seconder had filled in the paper before he left for Coconada it would have been a good nomination paper when delivered on January 2, 1924 by his proposer and seconder to the Returning Officer. What he did was to sign the nomination paper after he accepted the proposal of his proposer and seconder and left it with the instructions to fill up the other particulars. The learned Vakil for the Petitioner has quoted the case of Harman *v.* Park (7 Q. B. D., page 369), to show that the nomination must be fully filled up before it is subscribed by any one. The case was distinguished in Cox *v.* Davies (2 Q. B. D., page 202) on which reliance has been placed by the learned Counsel for the Respondent. Here the candidate's name had not been put in when the proposer and the seconder signed the paper. It was held that if the signature of the proposer and seconder were taken for filling in the name of the candidate that they did not intend, it would be a different matter, but that a nomination paper signed before it is properly filled up is not necessarily bad. The present case is slightly different, inasmuch as the candidate signed first as signifying his assent, and then his proposer and seconder signed afterwards. The learned Vakil asks as to when the nomination was made? The nomination takes place when the nomination paper properly completed and subscribed is delivered to the Returning Officer. The course adopted therefore by the Respondent was somewhat irregular but does not appear to be contrary to any provisions of law. We do not therefore think that the nomination was invalid.

Our conclusion therefore is that the nomination of the Petitioner was valid and was wrongly rejected. We also held that the Respondent was duly nominated. The result is that the election of Mr. C. R. Das should be set aside and a fresh election ordered.

In the circumstances of the case, we recommend that the parties do bear their own costs.

G. N. ROY
G. B. MUMFORD
GIRINDRA NATH MUKERJI.

UNITED PROVINCES LEGISLATIVE COUNCIL
MUTTRA DISTRICT (N.M.R.)

KUNWAR HUKUM SINGH (*Petitioner*)

versus

RAI BAHADUR BABU RAM NATH BHARGAVA
(*Respondent*)

In order to make a person an agent of a candidate, it is necessary that he must have worked with the knowledge or connivance of the candidate.

A District Magistrate is entitled to encourage a person to stand as a candidate for the Council, so long as he does not use the influence of his official position to secure his return.

The law does not strike at the legitimate influence and a candidate is entitled to the legitimate influence of his position and status.

At the outset we wish to comment on the unsatisfactory chracter of the list of particulars accompanying the petition. The petitioner was directed to supply better particulars, but he failed to do so. On the day fixed for hearing the absence of proper particulars was pointed out to us. We think we should have been justified at that stage in confining the Petitioner to the allegations in respect of which he had furnished the particulars required by Rule 33(2), but as some days were due to elapse before the Respondent's evidence could be heard, we decided to give the Petitioner a final opportunity to furnish the required information subject to the payment of damages to the Respondent. This he reluctantly did.

Certain charges of undue influence were made about which the learned Commissioners remarked—

"In conclusion we would remark that the evidence on which the Petitioner has based the above allegations of undue influence on voters at the poll is of the flimsiest nature and quite unworthy of credence."

Other allegations of personation, etc., were also disbelieved.

The Respondent was charged with the publication of false statements in a handbill which is marked as Ex. 1. The heading runs "Order of the respected Malviya Ji, the only leader, unparalleled founder of the Bharat Varsha Sanatan Dharma Sabha." This is followed by the injunctions, "Do not vote for Hukum Singh," "Do not be deceived." The suggestion is that it was an injunction to the voters from Pandit Madan Mohan Malviya not to vote for Thakur Hukum Singh.

The Respondent denies that he paid for or knew of this handbill. Madan Mohan, a press owner says that one Shyam Lal Jharia got the handbill printed for the Respondent. After discussing the evidence the learned Commissioners held as follows—

"We are not satisfied that the handbill was printed at the order of Shyam Lal Jharia. Conceding that the person who got it printed was one of his supporters, it by no means follows that that person was an agent of the Respondent as defined by Rule 30(*a*). The knowledge or connivance of the Respondent in the matter of this handbill has not in our opinion been proved."

The Commissioners further found that the bill did not contain such false statements in relation to the candidature of the Petitioner as were reasonably calculated to prejudice the prospects of his election.

Certain charges of undue influence having been brought to bear on the voters by Mr. Fremantle the District Magistrate were brought by the Petitioner. After discussing the evidence the Commissioners held as follows—

"In April 1923, the Chairmanship of the District Board was for the first time made over to a non-official. It was but natural that the Collector should be interested in seeing that the new District Board started under fair auspicies, and though we consider that Mr. Fremantle would have been better advised to have stood aside and refrained from giving any advice in the matter of the Chairmanship, it is not the District Board election which is in issue here, and it would be in our opinion a very far-fetched and unreasonable proposition to hold that Mr. Fremantle's action in suggesting privately to Pandit Radha Kishen to withdraw from the contest materially affected the result of the election to the Council eight months later. Mr. Fremantle's action did not amount to more than helping to put Babu Ram Nath in a position of influence which might be useful to him. It might with equal logic be urged that the recommendation for or bestowal of a title on a prospective candidate would be an exercise of undue influence. The law does not strike at the root of influence. A candidate is entitled to the legitimate influence of his position and status. The fact, therefore, that Babu Ram Nath, possibly with Mr. Fremantle's help, attained to the influential position of Chairmanship of the District Board cannot in our opinion be regarded as an exercise of undue influence on Mr. Fremantle's part in connection with the Council election unless Babu Ram Nath is shown to have abused his position as Chairman in that election."

An examination of the Petitioner's evidence makes it clear that the allegations with which he came into court are little more than the figments of a mentality which is prone to look upon even

the most harmless acts with the eyes of suspicion and to make a grievance out of the most ordinary occurence.

The result is that we find that the election is not liable to be declared viod and that the Respondent has been duly elected.

We recommend that the petition of Thakur Hukum Singh be dismissed and that he be directed to pay the costs of the Respondent which we assess at Rs.2,275.

H. NELSON WRIGHT
V. E. G. HUSSEY
G. C. BADHWAR

UNITED PROVINCES LEGISLATIVE COUNCIL
MUZAFFARNAGAR (M.R.)

NAWABZADA MUHAMMAD EJAZ ALI KHAN (*Petitioner*)

versus

KHAN BAHADUR KUNWAR ENAYAT ALI KHAN (*Respondent*)

The Commissioners are not competent to inquire into the plea of the petition being barred by limitation, after the petition has been admitted by the Governor.

A statement that the voters would be the object of divine displeasure, if they voted for the respondent, would amount to undue influence.

The allegations made by the Petitioner were denied by the Respondent, and on the issues the learned Commissioners found as follows:—We hold that personation has been proved in case of Mir Khan deceased and that his brother Chhajju voted in his name. As it is not proved that the Respondent or his agent connived at the personation, we find that this case falls within Schedule 5, part 2, Rule 2 of the Electoral Rules.

After discussing the evidence on the second charge of personation the learned Commissioners held—

"After a careful consideration of the evidence we hold that it is proved that voter No. 196, Nabi Bakhsh was personated by some unknown person, and that as identification at Jansath were being made by agents of the Respondent Kunwar Enayat Ali Khan, who himself was present, we hold that such personation was committed with the connivance of the Respondent or his agent."

The third count under the head of personation is that personation was committed by some person voting as Nabi Bakhsh, son of Hamid of Nagla Buzurg—a name which appears at No. 759 in the Electoral Roll, though no such person actually exists.

On the last hearing of the case the Respondent produced a man who gave his name as Nabi Bakhsh, son of Hamid of Nagla Buzurg, who says that he voted at the last election for the Respondent. The thumb impression of this witness was taken in court and has been found by the finger-print expert totally with the thumb impression on Ex. 7, which purports to be the signature slip of Nabi Bakhsh, son of Hamid, voter No. 759.

The signature of the attesting witness on this signature slip appears to be remarkably like the admitted signature of the Respondent, and Sher Muhammad Khan deposed that the signature was the Respondent's. Accordingly we examined the Government Examiner of Questioned Documents, who, after comparison of this signature with several admitted signatures of the Respondent, has pronounced it to be that of the Respondent. The Respondent has examined Mr. Charles Hardless who pronounced the signature on Ex. 7 not to be that of the Respondent . Of the evidence of the two experts we consider that of Mr. Brewester to be more reliable and convincing. We are satisfied that Ex. 7 does bear the signature of the Respondent. There is no reason why the so-called self-styled Nabi Bakhsh was not produced at the earlier stage of the proceedings. He himself admits that in receipts for rent he has described Nabi Bakhsh, as son of Muhamadi, but says that though his father's real name is Hamid, he is also called Muhamadi. We think it unlikely that his father's name is really Hamid, and we cannot place any reliance on his uncorroborated evidence, more especially as the petitioner had no opportunity of contradicting it.

The Respondent denies that Ex. 7 bears his signature, and also denies that he went into the verandah of the polling station; but on this point he is contradicted by his own witness Nawab Jamshed Ali Khan and Sakhawat Haider. If the denial of the signature is false, as we hold it to be, it follows that false personation was committed, and we hold that the Respondent was guilty of personation under Rule 3, part 1, Schedule 5, while the witness Nabi Bakhsh committed a corrupt practice under part 2 of that schedule.

We think that it is proved that Muhammad Faruq did address voters at Jansath station in terms that were likely to make ignorent and superstitious persons to believe that they would be the objects of divine displeasure if they voted for the petitioner.

Action of this kind undoubtedly falls within the category of undue influence. The evidence before us, does not, however, show that Muhammad Faruq acted with the connivance of the Respondent. We therefore find that the action of Muhammad Faruq falls under Section 1, part 2, of Schedule 5, of the Electoral Rules.

We find it proved that Respondent's voters were fed at the house of Rahmat Ilahi Khan. This evidence has not been rebutted by the Respondent. It has also not been shown that treating was done with the connivance of the Respondent. Hence we hold that the action of Rahmat Ali Khan falls under Rule 1, part 2, of Schedule 5.

We recommend to His Excellency the Governor that the election of the Respondent be declared void.

The Petitioner's costs which we assess at Rs.2,000 should be paid by the Respondent.

H. NELSON WRIGHT
V. E. G. HUSSEY
G. C. BADHWAR

UNITED PROVINCES LEGISLATIVE COUNCIL
MUZAFFARNAGAR M. R.
(2ND CASE)

KHAN BAHADUR MUZAFFAR ALI KHAN (*Petitioner*)

versus

1. NAWABZADA EJAZ ALI KHAN
2. MUHAMMAD AKRAM KHAN } (*Respondents*)

The respondent is entitled to know the names of the persons who were fed in a charge of treating.

A large number of charges were made in this case, but after a prolonged enquiry in which the evidence produced on both sides was disbelieved, all the charges were disbelieved on evidence.

There was a general charge of treating of voters by the Respondent in all the polling stations and their conveyance to the poll in hired cars, and, as a corrolary, the falsity of the Respondent's return of election expenses owing to the absence of any mention in it of such expenditure.

The supplying of voters with food finds mention in paragraphs 4, 12 and 17 of the particulars attached to the petition. In para. 4 one Abdul Hai is alleged to the petition. In para. 4 one Abdul Hai is alleged to have supplied meals to tenants of Qasba Pur Qazi and surrounding villages. Paragraph 12 deals with the supply of meals to voters at the polling station of Kairana. The allegation in paragraph 16 is that the Hon'ble Lala Sukhbir Singh fed and kept in his own house for a night before the poll about 125 voters. Paragraph 17 is a general statement as to the prevalence of

treating at all the polling stations.

We were not prepared to entertain and inquire into such vague assertions without particulars being furnished, and for reasons already stated we decided to allow the Petitioner an opportunity of providing fuller details, an order to this effect being passed on December 1. On December 5, Petitioner's counsel supplied what he called "further particulars." These, however, consisted of little else but the names of the villages in which the voters who were treated resided, and such phrases as "nearly all the voters of Respondent belonging to" and "about 125 voters" were employed to designate the persons treated.

The court found that this was not a proper compliance with the order of December 1, 1924, and held that the Respondent was entitled to have particulars as to the names of the voters who were fed. Accordingly on December 12, a list was supplied giving the names of 162 villagers who had been fed.

The charges were disbelieved after a discussion of the evidence.

The result is that we recommend that the petition be dismissed.

We further recommend that the parties bear their own costs. We make this recommendation in order to mark our strong disapproval of the manner in which the Respondent has endeavoured to meet the charges brought against him by the production of evidence which is not, in our opinion, capable of being believed.

H. NELSON WRIGHT
G. C. BADHWAR
TEJ NARAIN MULLA

BENGAL LEGISLATIVE COUNCIL.
PRESIDENCY DIVISION LANDHOLDERS

MAHARAJA SIR MANINDRA CHANDRA NANDY, K.C.I.E.
(*Petitioner*)

versus

HON'BLE MR. PRAVASH CHANDRA MITTER, C.I.E.
(*Respondent*)

Nomination is the first stage of election. The date with reference to which the question of the eligibility of a candidate is to be determined is the date fixed for the nomination, and if on that date a candidate is not eligible, his nomination paper must be rejected. The object of the

scrutiny by the Returning Officer is to see whether the nomination was valid on the day on which it was made.

The facts as set out in the petition are that the Petitioner was a member of the Council of State and on October 7, 1923, resigned his seat on the Council by a telegram and a letter addressed to His Excellency the Viceroy and Governor-General of India.

The telegram was received in Simla at 11-15 A.M. on October 7, and His Excellency's orders accepting his resignation were passed on the 10th.

The date fixed by Government for the presentation of the nomination paper of the candidates for election to the Bengal Legislative Council was October 8, and on that date the Maharaja delivered three nomination forms to Mr. Lindsay, the Commissioner of the Presidency Division, who was the Returning Officer for the Presidency Division Landholders' Constituency.

On October 9, the Maharaja sent another telegram to the Viceroy for communication of the acceptance of his resignation to the Returning Officer.

On October 10, his resignation was formally accepted by His Excellency and a notification of that date was published in the Gazette of India of October 13.

On October 11, the date fixed for the scrutiny of the nomination papers by the Returning Officer, an objection to the Maharaja's nomination was raised on behalf of the Respondent that the Maharaja was not eligible for election on the date of filing the nomination papers, as his resignation had not been accepted by the Governor-General and he was still a member of the Council of state. The Returning Officer thereupon made the following endorsement upon the nomination paper —

"I must refuse the nomination of this candidate, the Maharaja of Kassimbazar. Under Section 93 of the Government of India Act the sea. in the Council of State becomes vacant on the acceptance of the resignation of the member. The Maharaja wired his resignation on 7th instant and also sent a letter on that day. The only evidence of the acceptance of the resignation is telegram from Simla, from the Secretary Legislative Department, dated 10th instant. If this evidence is accepted, I must hold that the resignation takes effect from 10th instant, and that on 8th instant when the nomination papers were filed, the Maharaja was still a member of the Council of State. Accordingly at the time of his nomination, he was not eligible for election, cf., Rule 5 (1) (*c*) and so the provisions of Rule 11 were not complied with. The nomination is therefore refused under Regulation 21 (*i*) and (3)".

As there was no other candidate, the Returning Officer pro-

ceeded to declare Mr. Mitter duly elected and his name was published in the Calcutta Gazette.

The main point for our determination is whether the question of the eligibility of the Maharaja for election is to be decided with reference to the date of the presentation of his nomination paper, October 8, or to the date of scrutiny by the Returning Officer, October 11.

Mr. Chaudhuri who has appeared on behalf of the Maharaja contends that his resignation of his office in the Council of State had been tendered on October 7 and was accepted by the Governor-General on October 10. Therefore at the time of the scrutiny on October 11 the statutory bar contained in Rule 5 (*i*) (*c*) of the Electoral Rules of 1923 had been removed. The learned Counsel has referred to the regulations framed under Rule 15 of the rules with particular reference to Regulations XX and XXI. Regulation XX provides for the scrutiny of nominations in the presence of the parties or their agents while Regulation XXI provides for the examination of the nomination papers by the Returning Officer who "shall decide all objections which may be made to any nomination and may either on such objection or on his own motion, after such summary enquiry, if any, as he thinks necessary, refuse any nomination on any of the following grounds—

(*i*) that the candidate is ineligible for election under Rule 5 or Rule 6, or

(*ii*) that there has been any failure to comply with any of the provisions of Rule 11 or Rule 12".

Learned Counsel says that what the Returning Officer has to see in regard to Rule 5 is whether the candidate is eligible for election. He has not to see whether he is eligible for nomination. The date of scrutiny is the date with reference to which the eligibility of the candidate for election is to be determined. Further under Rule 5 a person shall not be eligible for election as a member of the Council if the labours under certain disqualifications, one of which is that he is a member of the Council, or of any other legislative body constituted under the Act and has made oath or affirmation as such member. The Maharaja had admittedly made the oath as a member, but it is argued that on the date of the scrutiny he had ceased to be a member of the Council of State and therefore, though he might possibly be said to be ineligible on the date on which the nomination paper was presented, the acceptance of his resignation on October 10, the day before the scrutiny, removed the disqualification. By a party of reasoning a person qualified on the date of nomination might be found to be disqualified on the date of scrutiny.

Learned Counsel further contends that in any case the mere tender of the resignation was in itself sufficient to vacate the seat as there is no rule under the Government of India Act under which the Governor-General is empowered to refuse a resignation. A member of an elected body stood on a footing different from a public officer who was required to observe certain formalities such as making over charge of his office.

Sir Benode Mitter who has appeared on behalf of the Respondent contends that the mere fact of the resignation having been tendered does not of itself vacate the seat. Section 93 of the Government of India Act says that " a nominated or elected member of either chamber of the Indian Legislature may resign his office to the Governor-General . . . . and on the acceptance of the resignation the office shall become vacant." The same provision is made in Section 64 of the Government of India Act where the resignation must be "duly accepted". The power to accept resignation implies also the power to refuse it. It would follow therefore that a member whose resignation had not been accepted continues to be a member until its due acceptance by the Govrnor-General. The Maharaja thus continued to be a member of the Council of State till the acceptance of his resignation on October 10.

Learned Counsel further contends that the eligibility of a candidate depends on whether he was, as a fact, eligible on the date of the nomination. Election is a continuing process in which the nomination is the first step. The nomination is the foundation of a candidate's right to go to the poll and is an integral part of election. Scrutiny is for the purpose seeing that what was required to be done had been done. Rule 11(1) says:—"Any person may be nominated as a candidate for election under these rules." Rule 11(3) provides that a candidate must assent to the nomination and must at that particular point of time have the capacity to accept the nomination and under Rule 11(5) he must also have the capacity of nominating election agent to act for him. The Maharaja, it is urged, had not the requisite capacity and was therefore ineligible at the time of nomination. It is further argued, that the date of the scrutiny of the nomination papers as laid down in Regulations XX and XXI is not the governing factor in considering the eligibility of the candidate. He must be eligible at the time of the nomination and if he has not the necessary qualifications then, he cannot acquire them between the date of the nomination and the date of the scrutiny.

We are of opinion that under the provisions of Rule 11 the date with reference to which the question of the eligibility of a

candidate for election is to be determined is the date fixed by Government for the nomination, and if on that date a candidate is not eligible, his nomination paper must be refused. The object of the scrutiny by the Returning Officer is to see whether the nomination was valid on the date on which it was made. The nomination is an integral part of the election and it cannot be supposed that a person who is ineligible on the date of the nomination can, in the interval between the nomination and the scrutiny, acquire new rights or that the acquisition of such rights would be sufficient to do away with his preexisting disqualification.

Various disqualifications which will render a candidate ineligible for election are given in Rule 5 (*i*). Rule 5 (*i*) (*c*) declares a person ineligible for election if he is member of the Council or of any other legislative body constituted under the Act and has made oath or affirmation as such member. In the present case it is admitted that the Maharaja had made oath as a member of the Council of State. It is also conceded that his resignation was not accepted until October 10, though the date for the presentation of the nomination paper was fixed for October 8. It is therefore plain that on October 8 the Maharaja was still a member of the Council of State and he was therefore ineligible under Rule 11 (1). The argument that the mere tender of his resignation authomatically terminates his office does not seem to us to be well founded. If it had been so, the words used in Section 93 and 64 of the Government of India Act which require acceptance by the Governor-General of the resignation as a condition precedent to the vacating of the office would be mere surplusage.

We are of opinion therefore that the nomination paper of the 'Maharaja has been properly rejected by the Returning Officer and that Mr. Mitter the returned candidate, has been duly elected.

We estimate the total amount of costs payable for the hearing at 40 gold mohurs and we recommend that that sum be paid by the Maharaja to Mr. Mitter.

A. J. CHOTZNER
D. C. PATTERSON
GIRINDRA NATH MUKERJEE

INDIAN LEGISLATIVE ASSEMBLY
PUNJAB LANDHOLDERS

S. JAIDEV SINGH (*Petitioner*)

versus

B. UJAGAR SINGH AND OTHERS (*Respondents*)

and

M. MUHAMMAD INSHA ULLAH (*Petitioner*)

versus

B. UJAGAR SINGH AND OTHERS (*Respondents*)

Regulations framed under the rules have the force of law in India.

The right of voting is a prevelege as distinguished from a duty and when a statute lays down regulations and formalities for the exercise of a prevelege, a rigorous observance of the same is taken to be intended by the legislature and is considered essential.

The trial of the petition resolved itself into a scrutiny of the ballot papers, and determination of the validity of the votes claimed or objected to by the parties.

The real dispute in the case centers round ballot papers which were let out of account by the Returning Officer, but which the Petitioner wants to be looked into.

As regards the 36 ballot papers falling under No. (1) in list A, which were received in envelopes without any covering letter, the position is briefly as follows. The voting being by post, the voters had to send in their votes to the Returning Officer according to Regulations 43 to 45 of the 'Regulations relating to the nomination and election of members of constituencies in the Punjab to the Legislative Assembly' (*vide* regulations published under Notification No. 128 at page 129 of the Punjab Gazette Extraordinary, dated August 28, 1923). According to these regulations the voter is required to mark his vote on the ballot paper sent to him and enclose the ballot paper in an envelope. Along with this envelope he is required to send in a covering letter bearing his signature and electoral number and authenticated by a Judge or Magistrate in the manner specified in Regulation 55. The voter is required to put the closed envelope containing his marked ballot paper and the

covering letter in another envelope and then send the letter by post or otherwise, so as to reach the Returning Officer on the day preceding that fixed for counting of the votes. According to the Returning Officer's declaration, the 36 ballot papers falling under (1) in list A were received in closed envelopes, but the envelopes were not accompanied by any covering letter at all. The 8 ballot-papers falling under (2) in the same list were not received by him till the day fixed for counting of the votes. Consequently, these ballot papers were not looked at by him and were left wholly out of account, according to Regulations 43-45.

As regards the 36 ballot papers received without any covering letters, the contention on behalf of the Petitioner Jaidev Singh is that the covering letters are probably in the inner envelopes along with the ballot papers and that the Returning Officer should have opened the inner envelope to see if the covering letters were there. It was conceded that the voters did not strictly comply with Regulation 45 in not keeping the covering letter outside the envelope containing the ballot paper; but it was urged that the regulations referred to above are only 'directory' and not 'mandatory' like the electoral rules themselves. In support of this argument wast cited the well-known English case 'Woodward *vs.* Sarsons in which it was held that certain rules in the schedules of the Ballot Act were 'directory' as opposed to the 'absolute enactments' in the body of Act itself, and that while the latter have to be strictly complied with, it is sufficient if the 'directory' enactments are 'substantially' complied with. We do not, however, think that there is any real analogy between the rules and the regulations relating to the Legislative Assembly elections on the one hand and the English Ballot Act and the rules given in the schedule of that Act. In Section 28 of the English Ballot Act of 1872 the provisions of the schedules are referred to as 'directory' and on considering the scheme of the Act and the schedules, the Judges held in Woodward *vs.* Sarsons that the rules given in the schedules, 'for the most part, if not invariably, point out the mode or the manner of doing what the sections enact shall be done.' A perusal of the rules and regulations relating to the Legislative Assembly will show that the regulations cannot be looked upon as mere directions for carrying out what is contained in the rules themselves. The rules as well as the regulations are framed by the same authority, viz., the Governor-General and is laid down in the notification relating to the regulations that they 'shall apply' to the conduct of elections of members to the Legislative Assembly. The regulations contain many important provisions as regards the conduct of the elections, corresponding to those which are contained in the English Ballot

Act itself (cf., Regulations 16 and 17 with Section 2 of the Ballot Act). The regulations appear to have been separated from the rules simply to facilitate the making of provisions suited to the varying conditions and requirements of the different Provinces in India and not because of their having less force or validity than the rules themselves.

The points in respect of which the rules in the schedule of the Ballot Act were held to be merely directory in Woodwards *versus* Sarsans were comparatively minor points, e.g., whether it was essential for a voter to make an exact cross against the name of the candidate, or whether a mark approximately like a cross or answering the same purpose would suffice and so forth. The point at issue before us, viz., whether it was or was not essential for the voter to keep the covering letter outside the envelope containing the ballot paper cannot, in our opinion, be looked upon as a trivial one. The covering letter is intended to identify the voter and plays as important parts in the system of voting by post. Without the covering letter there would be nothing to show to the Returning Officer that the envelope containing the ballot paper came from a registered voter at all. The Returning Officer could not have opened the inner envelope to see if the voter had by mistake enclosed the covering letter in it along with the ballot paper; for that would have violated the secrecy of the ballot,—a cardinal principal of the system of voting by ballot. Regulations 46 and 47 lay down that the Returning Officer is to put into the ballot box only those envelopes which are accompanied by proper covering letters. These envelopes alone are opened in the presence of the candidates and can be taken into account in declaring the result of the poll (*vide* Regulation 48). It was urged that the Returning Officer would have to open the inner envelopes, at any rate, at the time of making out the account of ballot papers, as laid down in Regulation 48; but it seems obvious from the rule that this may have to be done only after declaring the result of poll, when the paper are despatched to the Deputy Commissioner for safe custody. The fact has no bearing on the result of poll. It was finally urged that the electoral rules simply say that the voting shall be by ballot (*vide* Rule 14(4) of the Legislative Assembly rules and do not specifically lay down (like Section 2 of the Ballot Act) that the voting shall be secret. But the system of voting by ballot in itself implies secrecy. A reference to Regulations 12, 15, 16 and 17 will leave no doubt that the secrecy is intended to be as essential in India as in England. It is obviously for the sake of secrecy that Regulation 45 lays down that the ballot paper should be closed in an envelope and the covering letter along with that envelope put in another outer envelope.

Otherwise this elaborate procedure would be perfectly meaningless.

Regulation 41 clearly lays down that Regulations 42 to 48 shall apply to elections for the landholders' constituency. Regulations 43 to 45 which prescribe the procedure to be followed by the voters are in a mandatory form and a copy of these is supplied to the voters. There is, therefore, no excuse for any voter for not complying with these regulations. In the face of the clear and mandatory provisions of the regulations it is not open to us to treat them as mere 'directory' and condone non-compliance with the same. Such a procedure would be opposed to the well established principles of interpretation of statutes and would result in uncertainty and confusion. Regulation 45 lays down that 'account will not be taken of the ballot paper in the closed envelope unless the covering letter, which accompanies it, bears on it the signature and electoral number of the elector and is countersigned and sealed with the seal of his office by the attesting officer.' It was urged that this rule makes no specific provision for the case where there is no covering letter at all. But we do not think there is any force in this contention. According to Regulation 45 the only ballot papers inclosed envelopes, which can be taken into account, are those which are accompanied by properly authenticated covering letters. The others are all to be excluded and envelopes received without any covering letters also clearly fall under this category. In the case of these envelopes which are accompanied by covering letters but the covering letters are not duly authenticated an exception is created by Regulation 47 and they are treated as tendered ballot papers—so as to be subject to scrutiny by an Election Court. But there is no such provision for envelopes containing ballot papers which are not accompanied by any covering letter at all. The result is that those ballot papers in closed envelopes, which are not accompanied by any covering letters, cannot be taken account of even by us. It was urged that Regulation 37 alone gives the cases in which a ballot paper shall be rejected. But Regulation 37 refers only to those cases where the ballot papers are actually scrutinised by the Returning Officer. Regulation 43 and 45, on the other hand, refer to cases where the ballot papers in the closed envelopes are left altogether out of account owing to non-compliance with the regulations.

It was argued that the above interpretation would mean great hardship and that in the case of university elections the practice is to open envelopes which are not accompanied by covering letters. As regards the former this is not the only case where non-compliance with regulations results in a heavy penalty. What may appear to be comparatively trifling errors, would make a vote invalid under Regulation 37. The right of voting is a privilege—as dis-

tinguished from a duty and when a statute lays down regulations and formalities for the exercise of a privilege, a rigorous observance of the same is taken to be intended by the Legislature and is considered essential (cf. Maxwell; Interpretation of Statutes, 5th edition, pages 599-600). As to university elections, we do not know exactly what are the regulations governing the same and, in any case, the practice in those elections cannot be of any help in the face of clear regulations on the point at issue before us. We hold accordingly that the 36 envelopes received without covering letters were rightly left out of account by the Returning Officer and cannot be looked into.

We come next to the 8 envelopes, which are not received by the Returning Officer on December 5—the day preceding the date fixed for counting of votes—and were, therefore rejected under Regulation 43. It was argued that these envelopes did reach Lahore on December 5 and that the Returning Officer should have made special arrangements to receive them from the Post Office. From the post marks, these envelopes appear to have been delivered on December 6th. There is nothing before us at present to show that the letters did reach Lahore on December 5; but even assuming that the Petitioner is in a position to prove this (we were told that evidence on the point could be produced, if the argument was accepted), we find ourselves quite unable to accept the contention that it was the Returning Officer's duty to make special arrangements to receive them. There is absolutely nothing in the regulations to support this contention. According to Regulation 45, a voter may send the ballot paper by post or otherwise. It is, however, his business to see that it reaches the Returning Officer on the due date (cf. Regulations 43 and 45). Even if the envelopes were lying in the Post Office, there was no obligation on the Returning Officer to make special arrangements to take delivery from the Post Office. The Post Office, in the present instance, was clearly the agent of the Petitioner and not of the Returning Officer. Regulation 43 lays down that 'no account will be taken of the ballot paper unles it is received by the Returning Officer not later than the day before that fixed for the counting of votes.' The envelopes, in the present instance, were admittedly not received on the due date, and were, therefore, in our opinion, rightly left out of account by the Returning Officer.

We may add that we have heard the Government Advocate also on the above points and he supported the conclusion we have reached.

As regards the remaining ballot paper in dispute the number of votes, which are either claimed or objected to by the parties,

are as follow:—

Claimed	Objected re; Ujagar Singh		Objected re; Mohammad Insha Ullah
Jaidev Singh	7	2	1
Mohammad Insha Ullah	2		. .
Ujagar Singh	2		. .

Respondent Ujagar Singh had a majority of 13 votes over Jaidev Singh and 14 votes over Muhammad Insha Ullah. It is, therefore, clear that even if the above claims and objections are decided in favour of the Petitioner, Respondent Ujagar Singh will still have a majority of lawful votes, and the result of the election will not be affected, in any way. We are clearly of opinion that the five ballot papers falling under (3) in list A, which were classed as 'tendered' votes under Regulation 47, can be scrutinized by us and the ballot papers on which there is some writing from which the voter can be (*prima facie*) identified, must be held to be invalid. But we consider it unnecessary to enter into any detailed discussion of these points, as the result of the election cannot be affected by the decision with regard to these ballot papers.

On the above findings, it is clear that both the petitions must fail. We report accordingly under Rule 45 that B. Ujagar Singh Respondent was duly elected and that the petitions should be dismissed.

As regards costs, the points in dispute were technical and some of them arguable. In view of the comparatively narrow majority, it cannot be said that the Petitioners had no justification at all for lodging the petitions. In the circumstances, the costs need not be heavy. Each of the Petitioners should pay Rs. 250•oply as costs to the Respondent Ujagar Singh.

M. V. BHIDE
J. M. MACKAY
D. C. RALLI

INDIAN LEGISLATIVE ASSEMBLY
PUNJAB NORTH

RAJA GHAZANFAR ALI (*Petitioner*)

versus

CHAUDHRI BAHAWAL BAKHSH (*Respondent*)

The Electoral Rules requires particulars to be given as regards any corrupt practices alleged in the petition, but are silent as regards the form of petition and the procedure to be adopted when a scrutiny is demanded The petitioner in a claim for scrutiny was allowed to inspect the ballot papers when he had alleged that certain votes of his were wrongly rejected and certain votes in favour of his rival candidate were wrongly accepted, and filed an affidavit in support of this allegation.

The Petitioner claimed that he was entitled to a scrutiny on the allegations made in support of which he filed an affidavit. (The Returning Officer wrongly rejected certain votes in his favour as invalid and wrongly counted certain votes in favour of the Respondent as valid. Also that two ballot papers were missing and the election was void for uncertainty). He contends that it was impossible for him to give further particulars until a scrutiny was ordered and until he had an opportunity of inspecting the ballot papers properly. The following preliminary issues were, therefore, framed, and argued first:—

1. Should the Petitioner be required to give further particulars (e.g., the number of votes for petitioner declared invalid, the grounds on which they were declared invalid, etc.,) with respect to the allegations in paragraphs 4 and 5 of the petition at this stage?

2. Is the Petitioner entitled to a scrutiny on the allegations made in paragraphs 4, 5 and 7 of the petition as they stand at present?

The electoral rules require particulars to be given as regards any corrupt practices alleged in the petition but are silent as regards the form of the petition and the procedure to be adopted when a scrutiny is demanded, though the rules evidently contemplate a scrutiny petition (cf. Rule 44(*c*) and Regulation 37(2) with respect to the elections to the Legislative Assembly). Counsel for the Respondent has relied upon the English practice according to which each party has to deliver before trial a 'list of votes intended to be objected to and of the heads of objection to each such vote' (*vide* Rogers on Elections, 19th edition, volume II, page 298). But

the English practice is supported by a specific rule on the point (*see* Rule 7, Election Peition on rules). The present petition cannot obviously be held to be bad for want of particulars, as there is no such rule in force in India. As regards the question whether we should require the particulars to be supplied under the general provisions of the C. P. Code, or on the analogy of the English practice, we consider that there is much force in the contention of the Petitioner, that he cannot be expected to furnish any definite particulars until there is a scrutiny of the ballot papers and he has an opportunity to inspect them properly. In England, such an inspection is apparently permitted 'for the purpose of instituting or maintaining a prosecution for an offence in relation to ballot papers or for the purpose of a petition questioning an election or return' (*vide* Rule 40 of the Rules under the Ballot Act of 1872, pages 729-30, Rogers on Elections, Volume II). The corresponding rule in India (*vide* Regulation 49 of the Regulations framed under Rule 15 of the Legislative Assembly electoral rules) lays down, on the other hand, that the ballot papers, etc., 'shall not be inspected or produced except under the order of a competent court or of commissioner appointed to hold an inquiry in respect of an election.' It is, therefore, clear that the Petitioner was not in a position to inspect the ballot papers and obtain the necessary particulars before lodging his petition. Regulation 36(*c*) with respect to the Legislative Assembly election, no doubt, provides that at the time of counting the votes, the Returning Officer 'shall allow the candidates and their agents reasonable opportunity to inspect, without handling the ballot papers.' But it would be scarcely possible for a candidate or his agent to obtain at that time such definite particulars as regards the votes to be objected to, as are required in England to be delivered on a scrutiny petition (cf. Forms of Scrutiny list at page 937 of Rogers on elections, Volume II, 19th edition). The Petitioner has filed an affidavit stating the procedure that was adopted by the Returning Officer at the time of counting the votes, and alleging that it was impossible for him to scrutinize all the ballot papers as four persons were sorting them. The affidavit was not filed with the petition but counsel for the Petitioner has explained that he was doubtful on the point, as no definite procedure was prescribed by the Indian Rules. He had, however, expressed his readiness to file the affidavit denying the correctness of the allegation made in the affidavit filed by the Petitioner. We think that, in the circumstances, the Petitioner or his agent could not have had sufficient opportunity to scrutinize the votes and that he cannot be reasonably required to give the necessary particulars without a further and careful inspection.

The Petitioner has alleged in his petition that he would be found, on a scrutiny of the votes, to have had a majority of votes and this is practically all that is essential to allege in such a petition in England (*vide* Fraser's Law of Parliamentary Elections and Election Petitions, 3rd edition, page 224). It was urged that in the Tanjore case, a recount was refused when it was prayed for on the basis of 'nebulous allegations' (*vide* 1 I. E. P. page 223 at page 227). But it appears that the application for a recount was made in that case only during the course of the inquiry. In the present instance, the petition itself is chiefly for a scrutiny and recount and both have been specifically asked for in the petition. Moreover, it is to be remembered that the Respondent Bahawal Bux, in the present instance, had a very narrow majority, viz., of 3 votes only over the Petitioner. In England, when the majority is a narrow one, a recount is granted almost, as a matter of course (*vide* Fraser's Law of Parliamentary Elections and Election Petitions, 3rd edition, page 222).

We, therefore, held that the petition was entitled to a scrutiny, in the circumstances of the case, on the basis of the allegations made in the petition and the affidavit. Scrutiny was accordingly made of all the accepted and rejected votes. (There were no 'tendered' votes). The ballot papers given in the list A and B attached to this report were claimed or objected to by the Petitioner and Respondent respectively on the grounds shown therein. We shall deal with the ballot papers in the list A, which were claimed or objected to by the Petitioner.

LIST A

Exhibit A-2.—Was clearly a vote for the Petitioner and was evidently included in the votes for the Respondent Bahawal Bux by a mistake. This was not disputed by the Respondent.

Exhibit C-1.—The partial cross-mark against the name of Mohd. Ashraff appears to us to have been caused by folding the paper after the cross-mark was made in ink against the name of the Petitioner. This will clearly be seen by folding the paper and holding it against the light. The contention on behalf of the Respondent that the ballot paper must be held to be invalid under Regulation 37(*b*) owing to their being cross-mark against the names of more than one candidate (no matter how they are caused) cannot hold good, as there is no proper cross-mark at all against the name of Mohd. Ashraff, while the cross-mark against the name of the Petitioner

is perfectly clear. It may be mentioned that in England also, when additional marks were caused by folding, the ballot papers have been held to be good (*vide* the two bottom figures representing ballot papers Nos. 928 and 1364 on page 157 of Rogers on Elections, Volume II, 19th edition).

Exhibit C-2.—The mark against the name of the Respondent Bahawal Bux is not a cross and has been scored out. There is, on the other hand, a clear cross-mark against the name of the Petitioner. The mark against the name of the Respondent does not give rise to any uncertainty and does not matter in the circumstances. The case does not fall under Regulation 37. In similar circumstances ballot papers have been held to be valid in England (*cf.*, 1st and 2nd figures respectively on pages 164 and 166 of Rogers on Elections, Volume II, 19th edition).

Exhibit C-3.—This is practically a case similar to Exhibit C-2. There is only a line against the name of Respondent Bahawal Bux, while there is a clear cross-mark against the name of the Petitioner. The latter must be taken to be evidence of intention to vote for the Petitioner. In similar circumstances, votes have been held to be valid in England in favour of those candidates against whose names there were clear cross-mark, as distinguished from other marks such as mere line, etc. (*see* e.g., the second and third figures of ballot papers on page 168 of Rogers on Elections, Volume II, 19th edition).

Exhibit C-4.—In this case, there is a cross-mark against the name of the Petitioner, but in addition there appear the Urdu letters which have been crossed out. The contention on behalf of the Respondent is that this is handwriting of the voter from which the voter can be identified. This contention must, we think, prevail. The voter appears to have started writing his name and then crossed out the letters. In similar circumstances, votes have been held to be invalid in the Punjab South East Towns Case (*vide* 1 I. E. P., page 165 at page 169). In England also, letters in addition to a cross have been held to invalidate a vote in some cases (*see* e.g., figure of ballot paper No. 410 on page 160 of Rogers on Elections, Volume II, 19th edition).

Exhibit C-5.—In addition to a cross, there is some other mark—apparently unmeaning—in the blank space opposite the

name of the Petitioner. In the absence of any evidence to that effect, this mark by itself cannot be taken to be sufficient to identify the voters and cannot, therefore, invalidate the ballot paper No. 926 and the remarks with respect to the same in Woodward *v.* Sarsons, at pages 373 and 383 of Fraser's Law of Parliamentary Elections and Election Petition, 3rd edition).

Exhibit C-6.—In this case the voter has put a circle against the name of the Petitioner, while there is no other mark of any kind against the name of other candidates. According to the rules the voter ought to put a cross against the name of the candidate for whom he intends to vote (*vide* Regulation 17 of the Legislative Assembly Regulations). The contention on behalf of the Respondent is that a circle represents no vote at all and hence the ballot paper should be held to be invalid under 37(*c*). The point is not free from doubt. The English decision in similar cases are, no doubt, in favour of the Petitioner; but in England a distinction has been drawn between the rules in the schedules of the Ballot Act and the enactments in the body of the Act itself. It has been held in Woodward *v.* Sarsons that while the absolute enactment in the Act must be strictly obeyed, the rules in the schedules are merely 'directory' and substantial compliance is sufficient. There seems scarcely any justification for taking the Regulation 17 (referred to above) to the merely 'directory' in India. On the other hand, when there is a clear circular mark against the name of the Petitioner, and no other mark whatsoever against the name of any other candidate, it does not seem reasonable to hold that no vote is recorded on the ballot paper and that, therefore, it is invalid under Regulation 37(*c*). It was held in the Punjab South East Towns Case (1 I. E. P. pages 166 and 170) that unless a case strictly fell within Regulation 32 (which correspond to the present Regulation 37). The more breach of some other regulation, e.g., the lack of the official mark, did not render a vote invalid. Now, in the present instance, Regulation 17, no doubt, requires the voter to put a cross-mark against the name of the candidate for whom he wishes to vote and this regulation has been violated. But Regulation 37 does not specifically lay down that ballot paper without a cross-mark is to be rejected as invalid. Clause

(*c*) of the regulation has been cautiously worded and only lays down that a ballot paper is invalid 'if no vote is recorded thereon.' On the whole, we think it preferable to hold that the circular mark represents a vote and the case does not fall within the wording of Regulation 37(*c*). We therefore, take this to be a valid vote for the Petitioner.

Exhibit C-7.—This was conceded by the counsel for the Respondent to be valid vote for the Petitioner and need not, therefore, be discussed.

We now pass on to the List B.

Before proceeding to discuss the claims and objections of the Respondent in List B, we may briefly notice a preliminary objection, which was raised by the counsel for the Petitioner. It was urged that as the Respondent had not taken any objection in his recriminatory petition to the validity of the votes cast for the Petitioner, he was not entitled to take any objection to their validity even on scrutiny. The provision to Rule 42 of the Legislative Assembly Rule was relied upon in this respect. These rules, however, do not, as already pointed out, specifically lay down any procedure for a scrutiny petition and we doubt if the provision in question can be held to be applicable to the present case. In England, the Respondent is allowed to take such objection on scrutiny (cf., Rule 53 of 31 and 32 Vict. C. 125, at page 705 of Rogers on Election Petitions, Volume II), and a scrutiny could hardly be fairly conduced otherwise. However, we consider it unnecessary to discuss the point further, as we are clearly of opinion that the claims and objections of the Respondents in List B must all be disallowed.

LIST B

Exhibits B-1 to B-18.—These votes for the Petitioner, which were counted as valid by the Returning Officer or objected to on the ground that there are faint and partial impressions of thumb-marks thereon from which the voter can be identified. The impressions are, however, extremely faint and partial and are in our opinion quite insufficient for identifying the voter. It is not difficult to see how these impressions have been caused. According to Regulation 16, the voter has to affix his signature or thumb-impression on the counterfoil of the ballot paper, before he receives the ballot paper on which he has to record his vote. The marks on Exhibits B-1 to B-18 appear to have been inadvertently caused when the voters were handling the ballot papers after

affixing their thumb-impression. None but an expert can, of course, identify a person from thumb-impressions and that too can only be done when he gets the thumb-impression of the person concerned for comparison. The impression on the ballot paper by itself, is not sufficient for identification. Moreover, the impressions are, as already stated, faint and partial and consequently useless even for such comparison. We, therefore, hold that these have been rightly held to be valid votes for the Petitioner.

Exhibits B-19 and B-20.—There are clear cross-marks against the name of the Petitioner and the additional dot against the name of Mohd. Ashraff on Exhibit B-19 and the faint lines on Exhibit B-20 are immaterial. These votes are similar to Exhibits C-2 and C-3 and must be held to be valid for reasons given in the case of those votes.

Exhibit D-1.—This is a case similar to Exhibit C-4. There is a cross against the name of the Respondent Bahawal Bux, but along with it are some Urdu letters, which have been scored out. For reasons given in the case of Exhibit C-4, this ballot paper also must be held to be invalid.

The net result of the above is that the Respondent Bahwal Bux loses the vote Exhibit A-2 and the same goes to the Petitioner. The Petitioner also gains the votes Exhibits C-1, C-2, C-3, C-5, C-6 and C-7. Thus the Petitioner gains 7 votes in all. The Petitioner was declared by the Returning Officer to have secured 394 votes; but on a recount, the number of the ballot papers found by us in the sealed envelope containing the votes cast for Petitioner was only 393. Possibly Exhibit A-2, which is really a vote for Petitioner, was included by mistake in the sealed envelope containing the votes of Respondent Bahawal Bux. However that may be, it will be clear from the above that the Petitioner and the Respondent had the following number of valid votes—

Bahawal Bux	397—1=396 votes.
Ghazanfar Ali	393—7=400 ,,

The Petitioner has thus a majority of 4 lawful votes. The number of votes cast for the other candidates was also checked and found to be correct.

As regards the allegation in the petition, that one or two ballot papers were missing, we may note that we found at the time of recount that altogether 1,169 votes had been cast for the various candidates, while according to the account of the ballot papers received by the Returning Officer from the Deputy Commissioners (which was also produced before us and checked) only 1,167 ballot papers

had been received. There were thus two ballot papers in excess. It is not clear how this excess occurred. However, as the Petitioner has not been found to have a majority of 4, this excess of 2 ballot papers cannot obviously affect the result of the election and does not need any further inquiry.

On the above findings, we report under Rules 44 and 45 that the result of the election was materially affected by the improper rejection of certain valid votes in favour of the Petitioner Ghazanfar Ali and that the Petitioner, as a matter of fact, having secured a majority of lawful votes, is entitled to be declared duly elected. As the petition was rendered necessary only by errors in accepting or rejecting votes, we recommend that the parties should be left to bear their own costs.

LIST A

Exh. No.	Description	Claim or objection by petitioner
A-2.	A vote for petitioner, but was, through oversight, counted as a vote for the respondent, by the returning officer.	The vote should have been counted for the petitioner.
C.-1	A ballot paper with a clear cross-mark against the name of the petitioner and a partial cross-mark against the name of Mohd. Ashraff, another candidate. This was rejected by the returning officer.	The portion of a cross-mark against the name of Mohd. Ashraff is not really a separate mark at all made by the voter. It is merely a partial imprint of the cross-mark in ink against the name of petitioner, caused by the folding of the paper. The vote should be counted for the petitioner.
C.-2.	A ballot-paper with a cross-mark against the name of the petitioner and some mark which was crossed out against the name of the respondent. Rejected by the returning officer as invalid.	There is a clear cross against the name of the petitioner and the other mark, which has been crossed out, does not matter, this is a valid vote for petitioner.
C.-3.	A ballot paper with a cross-mark against the name of petitioner and a mere line against the name of the respondent. Rejected by the returning officer.	This was a valid vote for the petitioner.

Exh. No.	Description	Claim or objection by petitioner
C-4.	A ballot paper with a cross as well as certain Urdu letters ( )— which were subsequently struck out, against the name of the petitioner. Rejected by the returning officer as invalid.	This was a valid vote for the petitioner.
C-5.	A ballot paper with a cross and another mark against the name of the petitioner. This was rejected by the returning officer as invalid.	This was a valid vote for the petitioner.
C-6.	A ballot paper with circle-mark against the name of the petitioner. This was rejected by the returning officer as invalid.	This was a valid vote for the petitioner.
C-7.	A ballot-paper with a cross and a line against the name of the petitioner. This was rejected as invalid by returning officer.	This was a valid vote for the petitioner.

LIST B

Exh. No.	Description	Claim or objection by respondent Bahawal Bux
B-1 to B-18.	Ballot papers with some faint and partial marks of thumb impressions. These votes for petitioner were counted as valid by the returning officer.	These votes for the petitioner ought to be rejected as invalid, as the voter can be identified by the thumb-marks.
B-19.	A ballot paper with a cross-mark against the name of the petitioner and a dot against the name of Mohd. Ashraff. This was counted as a valid vote for petitioner by the returning officer.	This vote should have been held invalid on account of the dot against the name of Mohd. Ashraff.

Exh.	Description	Claim or objection by respondent Bahawal Bux
B-20.	A ballot paper with a cross-mark against the name of the petitioner and faint pencil marks against the names of respondent and Mohd. Ashraff. This was counted as a valid vote for petitioner by the returning officer.	This should have been held invalid on account of the pencil marks.
D-1.	A ballot paper with a cross against the name of the respondent. Along with the cross, there are some Urdu letters, which have been scored out. This was rejected as invalid by the returning officer.	The Urdu letters are not clear and are sufficient to identify the voter. Hence this should not have been taken as a valid vote for the respondent.

M. V. BHIDE
J. M. MACKAY
D. C. RALLI

PUNJAB LEGISLATIVE COUNCIL
PUNJAB NORTH EAST TOWNS CASE (N.M.)

RAI BAHADUR PANNA LAL (*Petitioner*)

versus

LALA MOHAN LAL (*Respondent*)

Each nomination paper must be accompanied by a separate declaration as regards the election agent.

The returning officer is bound to decide all objections which may be made to any nomination, and may either on such objection or on his motion refuse any nomination paper on certain grounds.

A nomination paper which does not give the number of the candidate in the electoral roll of the constituency in which his name is entered should be rejected.

The principle point involved in this case is the interpretation of Rule 11(5) of the Punjab Electoral Rules. The Petitioner ac-

cording to his own case, put in nomination paper No. 2-B, along with a copy of the Electoral Roll, a declaration as regards election agent, and a covering letter, all these four documents being pinned together, while below them he put in two nomination papers Nos. 2 and 2-A. All were presented to the Returning Officer at the same time, but Nos. 2 and 2-A had not a separate declaration as regards his election agent. The Returning Officer took out the pin and looked at the papers and the order he placed them in was as follows—

Nomination paper No. 2 comes first. This is followed by the declaration as regards the agent, then comes nomination paper No. 2-A then nomination paper No. 2-B, and lastly, the covering letter of the Petitioner. The Returning Officer proceeded to hold on the day of scrutiny that Forms Nos. 2-A and 2-B were not accompanied by a separate declaration as regards the election agent and were therefore invalid. He held, however, that nomination paper No. 2 was accompanied such a declaration, but that it was invalid because instead of the name of the constituency in entry No. 8 there was only a reference to an Electoral Roll given. In this way all the three papers were rejected and as the Respondent was the only other candidate he was elected to be duly elected.

The Petitioner's case is that in reality the declaration as regards his election agent was pinned to nomination paper No. 2-B which was a good paper, and as to which no objection was taken except that it was not accompanied by a declaration. It was also claimed that as no objection was taken to it as regards the description of the candidate, none could be taken now and that therefore it ought to be declared that the Petitioner's nomination paper No. 2-B was a good paper.

It was further claimed that the meaning of Rule 11(5) was that only one declaration need accompany any number of nomination papers.

Regulation 11(5) runs as follows:—

> "Every nomination paper delivered under Sub-rule (3) shall be accompanied by a declaration in writing subscribed by the candidate that the candidate has appointed or does thereby appoint as his election agent .... and no such candidate shall be deemed to be duly nominated unless such declaration is delivered along with the nomination paper."

Now the meaning of the word "every" is given in Webster's International Dictionary as being equivalent to "all taken separately one by one out of an indefinite number." An illustration is given in the Dictionary as follows.—

"Every" relates to more than two and brings greater prominence the notion that not one of all considered is excepted."

This means that each individual of the aggregate without exception is considered, Rule 11(5), therefore, according to its plain English meaning comes to this that all nomination papers, taken separately one by one and not one of the whole number being excepted shall be accompanied by a declaration as regards the election agent. This means, in our opinion, that each nomination paper must be accompanied by a separate declaration as regards the election agent.

We do not think that it is a sound argument that if three nomination papers are put in at one time while at the same time one declaration paper is put in along with them this means that each nomination paper is accompanied by a declaration.

This being the case we shall accept the Petitioner's own allegation that his declaration accompanied nomination paper No. 2-B. The returning officer may have in all good faith changed the papers when he took out the pin without himself being aware that he did so. The question now to be determined, therefore, is as to whether nomination paper No. 2-B is a good paper.

The Petitioner objected that the Commissioners could not go into this point because the Respondent only took the objection as regards this paper before the Returning Officer that it was not accompanied by a declaration. There is no force in this objection, however, as under Regulation 41 of the regulations published notification No. 641, dated 20th August 1923, the Returning Officer is bound to decide all objections which may be made to any nomination, and may either on such objection or on his own motion refuse any nomination paper on certain grounds. It follows, therefore, that the Returning Officer can take any objection on his own motion and obviously his power is not greater than that of the Commissioners. It would be useless for a Returning Officer to take up numerous objections against a nomination paper if he were satisfied that there was one good objection against it.

It is clear that nomination paper No. 2-B is not a good nomination paper whether it be held that a nomination paper falls within the mandatory or directory part of the rules. For example, the eighth entry should give the number of the candidate in the Electoral Roll of the constituency in which he is registered as an elector and at the same time, whereas in this case, the Electoral Roll is sub-divided and separate serial numbers are assigned to the electors entered in each sub-division, a description of the sub-division in which the name of the candidate is entered must also be given. Now all that is in this entry is "549 (Ward No. 5)."

There are 13 sub-divisions in this constituency and several of them have a ward No. 5. It was argued, however, that only

one of the sub-divisions, namely, the Municipality of Ambala, has a ward No. 5 in which occurs No. 549. We do not think, however, that it was the duty of the Returning Officer to search every sub-division of the Electoral Roll to find out if this was a correct entry. Even if the filling in of a nomination paper falls within the directory part of the rules there must still be a substantial compliance with the directions. There was not a substantial compliance in the present case, as the entry should have been "549, the Municipality of Ambala, Ward No. 5" or simply "549, the Municipality of Ambala".

It follows that the nomination paper is not a good paper.

The election of the respondent was therefore valid.

We recommend that the Petitioner should pay costs of the Respondent amounting to Rs. 100.

J. ADDISON
PHILIP MORTON
D. C. RALLI

CENTRAL PROVINCES LEGISLATIVE COUNCIL
RAIPUR NORTH (N.M.R.)

BADRI PRASAD (*Petitioner*)

versus

SHEODAS DAGA (*Respondent*)

The omission to specify the description of the sub-division of the constituency, is a highly material one, and the nomination paper was held to have been rightly rejected on that ground.

The fact that a person is misdescribed in the electoral roll will not disentitle him from voting provided that there is no doubt as to the person whose name appears on the electoral roll. Upon the same principle, if there is no doubt as to the identity of a candidate, his nomination paper will not be rejected.

An objection about the name of an elector having been wrongly entered in the electoral roll cannot be entertained at the time of the nomination of a candidate or the hearing of a petition.

The nomination paper of the Petitioner was rejected in consequence of an objection by the Respondent to the effect that in the space for the number of the candidate in the Electoral Roll of the constituency in which he is registered as an elector, there was failure to specify the sub-division of the constituency in which his name was entered. The constituency in question was the Chhatisgarh ur-

ban one. Under Regulation 2(5) made under Rule 9(?) of the Central Provinces Electoral Rules, it is mandatory that there should be a separate serial number for the electors of so much of the constituency as lies in each district. The Chhatisgarh Urban Constituency is situated in the Raipur, Bilaspur and Drug districts respectively. Under the note designated by an asterisk on the nomination paper a description of the sub-division in which the name of the person concerned is entered must be given in the nomination paper, where the Electoral Roll is sub-divided as in the case in the Chhatisgarh Division Urban Constituency. There was, here, in our opinion a clear failure to comply with this provision. The omission cannot be deemed a trivial one because there were two other Electoral Rolls in the constituency which the Returning Officer would not, in the ordinary course of matters, have before him and the "No. 119" entered in the nomination paper, therefore, may conceivably in our opinion have referred to either the Bilaspur or the Drug sub-divisions. The omission, therefore, to specify the description of the sub-division was in our opinion a highly material one and we find that the returning officer was correct in rejecting nomination paper No. 5.

The Returning Officer rejected a second nomination paper of the Respondent on two grounds namely.—

(1) That the age shown in the nomination paper was 30, while the corresponding figure in the Electoral Roll was 33; and

(2) that the address shown in the nomination paper was Tikrapara while the corresponding entry in the Electoral Roll was Tikra.

Under Regulation 4(1) made under Rule 15 of the Central Provinces electoral rules, the returning officer may refuse a nomination paper on any of five grounds. The only two of these grounds which in our opinion are conceivably applicable to the case are Sub-clauses (3) and (4) of Regulation 4(1). As regards the first of these, there was in our opinion, as such, no failure to comply with the provisions of Rule 11 or Rule 12. What, in fact, occurred was that two mistakes in the matter of details as to age and address were in fact made in filling up the form. The mistakes were, on the face of them, obvious clerical ones. There is no question but that Tikra and Tikrapara referred to the same local area and the slight mistake in age was unimportant. As regards the second possible ground for rejection, viz., an objection as the identity of the candidate under Sub-clause (4) of Regulation 4(1), it does not seem to us that this question was specifically raised by the Respondent before the Returning Officer, nor does it seem to us that the Returning Officer did himself enter into the

question of identity. He, unlike us, would have been in a peculiarly favourable position to have made summary inquiry, into the question of identity—a procedure contemplated in the Regulation 4(1) we are considering. There is nothing to show that he made any such summary inquiry, and we do not regard the order of rejection as having been passed on the ground that the Returning Officer had any doubt as to the identity of the candidate to whom the nomination paper professed to relate. Thus the position is that the nomination paper of the petitioner, Mr. Badri Prasad, was rejected merely because, there were two trifling discrepencies, probably the result of clerical mistakes, as to his age and address. In the Oldham case 1869 (1 O'M. and H. 153) it was held that if a person on the register is called by a wrong name, that will not vitiate his vote, provided that there is no doubt as to the person in question being the one whose name appears on the electoral register. Upon the same principle, it seems to us clear that, in the present case, there was no real or valid doubt as to the identity of the petitioner, Mr. Badri Prasad, and it follows that the second nomination paper was wrongly rejected by the returning officer.

The Petitioner has also objected to the election of the Respondent on the ground that one sunder Das who has supported his nomination in Non-Muhammadan Raipur District (North) Rural Constituency had also supported the nomination of another candidate, Mr. Yado Ram Rao, pleader, for the Non-Muhammadan Urban Constituency. In this connection we only desire to say that the name of Sunder Das, the individual in question, had apparently been registered on the Electoral Roll of two general constituencies in contravention of the third proviso to Rule 7. In our opinion, however, it is not open to us to go into this matter now. The time for objecting to the name of Sunder Das appearing in the Electoral Roll of more than one constituency has long since gone by. We are thus faced with a *facit accompli* in the connection. As the name of Sunder Das appeared on the Electoral Roll of each of these constituencies, we do not think that any objection can now be and to his having proposed or seconded a candidate in each of the two constituencies in question on the Electoral Roll of which his name appeared. As regards this matter, therefore, the election of Mr. Sheo Das Daga could not in our opinion be questioned.

Our dicision that the second nomination paper was improperly rejected by the Returning Officer, necessarily implies our holding that the returned candidate, has not been duly elected and his election is therefore void. We find accordingly.

We fix Rs. 100 as Petitioner's costs to be paid by the Respon-

dent.

C. S. FINDLAY
BAPURAO SADASHIVA
B. M. VIGHNAY

PUNJAB LEGISLATIVE COUNCIL
RAWILPINDI AND LAHORE DIVISIONS

LABH SINGH (*Petitioner*)

versus

NIRANJAN DAS (*Respondent*)

The Returning Officer is given power to determine by summary inquiry the identity of the candidate nominated in order to determine the validity of a nomination paper.

A recriminatory petition cannot be filed against a petitioner unless he claims the seat.

The electoral roll is final as regards voters except that a voter if he is on the roll of more than one general constituency can vote only in one of them, and even though his name appears on the electoral roll, he is not entitled to vote if he is subject to any of the statutory disqualifications, e.g., minority, etc.

The rules do not insist on any verbal correspondence between the entries in the Electoral Roll and those in the nomination paper, and a nomination paper cannot be rejected on merely trivial irregularities.

The addition of caste "Joneja" after the name of the proposer in the nomination, the said caste not appearing in the electoral roll was held not to affect the genuineness of the nomination paper and therefore a trivial irregularity.

The addition of the word Mr. or Sardar before a name also is a trivial departure from the wording of the electoral roll.

The word cash is not to be confined to coins only. The word includes other forms of ready money also.

The declaration of the appointment of an election agent is not a power of attorney and therefore does not require a stamp.

The rough and ready tests for determining whether a man belongs to a particular religion are not enough for the purposes of an inquiry at an election petition, and a person cannot be held to be a Sikh only because he was long hair and does not smoke, etc.

The legislature has given special representation to persons belonging to two religions, viz., Muhammadan and Sikh, and the rest of the reli-

gions are lumped together. A representative of the two former religions for the legislature must himself belong to the religion whose followers he is to represent.

No man is born a Sikh, he can only become one by baptism, and no man can become a Singh until he has received the Pahul or peculiar baptism instituted by Guru Gobind Singh.

A person who is born a Hindu or Sikh does not cease to be so merely by adopting certain hetrodox practices.

The words of statute when there is no doubt about their meaning are to be understood in the sense in which they best harmonise with the subject of the enactment and the object which the legislature had in view. Their meaning is found not so much in a strictly grammatical or etymological propriety of language, nor even in the popular use, as in the subject or in the occasion they are used and the object to be attained.

The Returning Officer held the nomination papers of all the candidates excepting the Respondent to be invalid, with the result that the Respondent was declared duly elected. Petitioner contends that the Returning Officer was not justified in holding his nomination papers (Petitioner has presented five in all) to be invalid, and prays for a declaration that the election of the Respondent was null and void.

Certain preliminary issues were disposed of by order, a copy of which forms an annexure to this report. The remaining issues are as follows—

(1) Was the Returning Officer justified in rejecting the nomination papers of the Petitioner?

(2) Did the document filed by the Petitioner, which purports to be his declaration, require a stamp-deed, and if so, what is the effect of the omissions?

(3) Is the Petitioner a Sikh, and if so, what is the effect of this?

Issue No. 1—The grounds on which the nomination papers were rejected are as follows—

(*a*) That the name of the Petitioner, as given in the nomination papers, was not identical with the person entered in the Electoral Roll inasmuch as the name given in the nomination papers was prefixed by 'Mr.', or 'Sardar', while the Electoral Roll showed no such prefix.

(*b*) That the names of the proposers and seconders did not tally with their signatures inasmuch as to their names, as given in the nomination papers, their parentage and caste were added.

(*c*) That the constituency named in the nomination papers did not exist inasmuch as the word 'rural' was unnecessarily added at the end of the name of the constituency.

As regards the above grounds, we may say at once, that they appear to us to be of a trivial character and not sufficient to invalidate the nomination papers. The nomination papers, have no doubt to be filled with great care, but the only grounds on which a Returning Officer can refuse a nomination paper are given in Regulation (4), as framed by the Punjab Government under Rule 15 of the Punjab Electoral Rules. The objection to the addition of the word 'rural' in the description of the constituency is not covered by the rules and is of no weight, as it is not denied that the constituency in question is 'rural', and there is no suggestion that there was any room for doubt as to which constituency the Petitioner wanted to stand for. As regards the names of the candidate and his father too, it does not seem reasonable to hold that the candidate was not identical with the person whose electoral number was given on the nomination paper because 'Mr.', or 'Sardar' were prefixed to the names of the candidate or his father, as given in the nomination paper. The rules do not insist on any verbal correspondence. Regulation 4 referred to above would show that the nomination paper could be properly rejected only if there was any *prima facie* good ground for doubt as to identity. The Returning Officer, in the present case seems to have taken too narrow a view of the matter. The Returning Officer has been given powers to make a summary inquiry if he really thought that there was any room for doubt as to the identity in the present case, he would have been, we think, well-advised to do so before refusing the nomination paper. On behalf of Respondent 15 Q. B. D. 273 was referred as an authority but in that case, there was a difference in the names, which was likely to give rise to some doubt as regards identity. In the present case, the only difference consists of the prefix Mr. or Sardar before the names. It is not suggested before us that there is any other person except the Petitioner answering the description of the person, whose electoral number is given below the name of the Petitioner in the nomination paper and the point need not be discussed further. As regards the signature of the proposer to which the Returning Officer took exception in one of the nomination papers, it will appear only if he considered the signature to be "not genuine". The addition of the caste 'Joneja' after the name cannot obviously affect the genuineness of the signature.

We now pass on to the other grounds detailed by the counsel for the Respondent in his statement, dated March 8, 1924. These grounds are as follows.—

(1) The Petitioner was not, as a matter of fact, "legally" enrolled on any general constituency in the Punjab and was, therefore, not eligible as a candidate.

(2) The Petitioner made the deposit of Rs. 250 in currency notes and not in cash, as required by the rules.

It is clearly proved by the evidence that the Petitioner's name does appear on the Electoral Roll of the constituency for which he has stood as candidate. It is the business of the revising authority to see that the Electoral Roll is correctly prepared and an objection petition is not essential for removal of a name, which has been wrongly entered. The decision of the revising authority is, moreover, final in this matter and the right to vote of any person, whose name is on the roll cannot be questioned except on the grounds given in the proviso to Rule 10 cf., also I. E. P. 53, and Rogers on Elections, Volume 2, page 330, 19th edition). No such ground has been, however, urged in this case. The Petitioner's name being on the Electoral Roll of the constituency in question, as finally sanctioned, the Respondent is not even entitled to raise this point before us.

According to the rules, the deposit of security has to be made either in cash or Government Promissory notes. Our attention has been drawn to the use of the word 'cash' in certain enactments, where from the context the word has been taken in the sense of coins; but this does not show that cash means coins and nothing else.

According to the plain dictionary meaning, the word includes not only coins but other forms of ready money. The wording of the rules make it clear that the word 'cash' is merely used to distinguish cash payment from payment otherwise than in ready money, e.g., by cheque or Government Promissory notes. If the object was to restrict the payment to coins, this would easily have been done by using the word 'coin' instead of 'cash'.

Issue No. 2—The next issue relates to the declaration filed by the Petitioner along with his nomination papers. The contention of the Respondent is that it is tantamount to a 'power of attorney' and should have been stamped. No authority is cited in support of the contention and it is directly opposed to the view taken in 1 I. E. P. at pages 76, 214 and 159. It was urged that the wording of the rule relating to the declaration has been altered, but we fail to see that there is any such change as could affect the reasoning adopted in the above decisions. It may also be noted that, in the present case, the Petitioner declared himself to be his election agent. It seems to us that such declaration could in no sense be considered a 'power of attorney'.

Issue No. 3—Respondent's contention is that the Petitioner is a Sikh and therefore not entitled to stand as a candidate for a Non-Muhammadan Constituency.

According to Rule 6(*b*) only a Non-Muhammadan is entitled

to stand for a Non-Muhammadan Constituency. The term Non-Muhammadan has been used in a peculiar sense and includes all persons who are neither Muhammadans nor Sikhs. The contention of the Respondent is that the Petitioner is a Sikh, and therefore not a Non-Muhammadan. We have therefore to determine who is to be considered a Sikh, for the purposes of Rule 6(*b*).

If a question arises as to whether a person is or is not a Sikh, he shall be deemed respectively to be or not to be a Sikh according as he makes or refuses to make in such form and manner as the local government may by regulation prescribe a declaration that he is a Sikh. According to Form No. 7 attached to the regulations the declaration prescribed by the local government is as follows—

"I solemnly affirm that I am a Sikh, that I believe in the Guru Granth Sahib, that I believe in the Ten Gurus, and that I have no other religion".

Judged by this test, there is no doubt that the Petitioner is not a Sikh. He refused to make the above declaration both before the Returning Officer and before us.

The census reports recognise the difficulty of differentiating Sikhs from Hindus, but do not pretend to attempt at any accurate definition. The rough and ready tests adopted at the census are of little value for our purposes. The basis of Muhammadan constituency cannot be said to be anything except the Muhammadan religion. The legislature has given special representation to two religions, viz., Muhammadan and Sikh, and the rest of the religions are naturally lumped together as a consequence.

If the legislature did not want to restrict the choice of a candidate, the Sikhs could have easily been left to elect any person they liked,—whether he was a Sikh according to the test of the declaration specified above or not. But the legislature has thought it necessary to restrict the choice of a candidate too to Sikhs.

It was urged that we must interpret the rules, as they stand and that it is not for us to speculate as to what was the intention of the legislature (4 I. L. R. Lahore, 323). But this rule applies only when the words admit of one and only one interpretation. A different rule has to be applied when the words are capable of different interpretations, as in this case. "The words of a statute when there is a doubt about their meaning are to be understood in the sense in which they best harmonise with the subject of the enactment and the object which the legislature has in view. Their meaning is found not so much in a strictly grammatical or etymological propriety of language, nor even in the popular use, as in the subject or in the occasion they are used and the object to be attained" (Max-

well: On the Interpretation of Statutes, 5th edition, page 85). Taking the rules and regulations as a whole, the conclusion seems almost irresistible that the word 'Sikh' in Rule 6(*b*) is used in no other sense than that of the explanation and the declaration given in regulations under Rule 8, and the schedules attached thereto.

No man is born a Sikh; he can become such only by baptism and none can become "Singh" until he has received the Pahul or peculiar baptism instituted by Guru Govind Singh. The mere fact that a child born of a Hindu or Sikh parents is described as a Sikh or Hindu during its childhood does not show that Sikhism or Hinduism has nothing to do with religious belief. An infant is naturally incapable of religious consciousness and such description is of little significance. Counsel for Respondent cited 63 P. R. 1900. It was only held in that case, that a person who is born a Hindu or Sikh does not cease to be so merely by adopting certain heterodox practices. In the present case the Petitioner's father has not been proved to be really a Sikh and the Petitioner himself has openly declared himself to be not a Sikh. It was further urged that in 63 P. R. 1900 Sikhs were held to be Hindus within the meaning of Section (2) of Act 5 of 1881 (Probate and Administration Act). We fail to see how this fact helps the Respondent—Even if Sikhs were held to be Hindus for the purpose of certain enactments. It does not follow that there is no distinction between the two. The question still remains as to who are to be considered as Sikhs.

The Petitioner being eligible as a candidate and his nomination paper having been wrongly refused, the result of the election must be held to have been materially affected (cf. I. E. P. 178, 183.) We are, accordingly, of opinion that the election of Respondent we assess at Rs.500.

The Respondent should pay the cost of the Petitioner, which we assess at Rs. 500.

M. V. BHIDE
J. M. MACKAY
D. C. RALLI

ANNEXURE

Four preliminary points were raised in this case disposed off by this order.

The first contention raised by the Respondent is to the effect that the Petitioner filed two petitions; that he could file only one

and that the one he first filed was not filed within time allowed by Rule 32, and that therefore neither of the petitions could be gone into.

The scrutiny of the nomination papers took place on November 6, 1923. All the papers presented by the Petitioner were held to be invalid, and as the Respondent was the only other candidate he was declared elected. The result of the election, however, did not appear in the Government Gazette till November 30, 1923, while the Respondent filed his return of election expenses on January 3, 1924. Now the first petition was presented to His Excellency the Governor on December 3, 1923, while the second petition was presented on January 16, 1924. Both petitions are in identical words except that the second bears a note to the effect that the first petition had been filed before the Respondent had lodged his return of election expenses, and that therefore by way of precaution a second petition was put in after the return of the election expenses had been lodged.

It was argued that Rule 32(1)(*a*) lays down that an Election Petition has to be presented within 14 days from the date on which the return of the election expenses of the returned candidate and the declarations referred to in Rule 19 are received by the Returning Officers. It was admitted that the second petition was filed within these 14 days, but it was contended that the first petition was filed before those 14 days and was premature, and should be dismissed as being against the provisions of Rule 32(1)(*a*) while the second petition should be dismissed because the candidate had no power to file a second petition. On the other hand, it was argued on behalf of the Petitioner that the petitions had been sent to the Commissioners for trial by His Excellency the Governor, and that they had no power to go behind this order and to dismiss them. We do not, however, propose to settle these points as it seems to us quite clear that there is no defect by reason of the two petitions presented in this case. The petitions are exactly the same. One was filed before the period of 14 days mentioned in Rule 32(1)(*a*) and the other was filed within those 14 days. It is obvious that one or other of those petitions is a good petition, and there is no substance in the contention that because the Petitioner filed a second petition by way of precaution he ought to be penalised by having both the petitions dismissed. We would so decide. We further point out that in England a supplemental petition may be filed to meet some difficulty as to the time at which the original petition was presented. (See 2 O'M. and H. 127 and page 686 of Parker's Election Agent and Returning Officer, 3rd edition).

Another point raised by the Respondent was that it was com-

petent for him to attack the Petitioner, even though the Petitioner did not claim the seat for himself, by stating that the Petitioner was himself ineligible for election for five years as he had not lodged his return of expenses in the manner prescribed by Rule 19, and that the said return was also false in some material particulars. The Respondent asked that this question should be gone into by the Commissioners, even though it was admitted that under Rule 42 the Respondent could not give evidence to prove that the election of the Petitioner would have been void if he had been the returned candidate and a petition had been presented complaining of his election.

There is no doubt that recriminatory statement cannot be filed by the Respondent as the Petitioner has not claimed the seat. The argument, however, on his behalf was that an allegation which falls within Rule 5(4) cannot in itself be made a ground of an Election Petition as it does not fall within Rule 44. Such a ground can only be taken if some other ground falling within Rule 44 is also alleged. In the Attock case (1 I. E. P. 1) at pages 18 and 19, there was some discussion of this question. In that case the Petitioner claimed the seat, and therefore we think that there is a distinction between that case and the present case. Where the Petitioner himself claimes the seat any ground of attack should be allowed to the Respondent. It was held in the Attock case that the Commissioners could not report that an election should be declared void on the ground that a false return of election expenses had been made, but such an election could be avoided by a declaration under Rule 25 that the seat of the elected person was vacant by reason of ineligibility arising out of the application of Rule 5(4). The Commissioners in that case thought in the circumstances of that petition that they should go into the question of the alleged false return of expenses of the Petitioner and not leave the question to be decided in a judicial proceeding before a magistrate.

It is quite clear that we are not compelled to go into this question and we are further of opinion that when the Petitioner himself does not claim the seat this question should not be gone into by us, though the Respondent can take any steps he cares to have the matter decided by a magistrate. In England recriminatory evidence can be given by the Respondent only when the Petitioner claims the seat. (See Fraser's Law of Parliamentary Elections and Election Petitions, 3rd edition, page 228.) We have been referred to no case in which a respondent was allowed to attack the return of election expenses of a petitioner who did not claim the seat. For these reasons we decline to go into this question, and in doing so we distinguish the Attock case already referred to where the Petitioner

claimed the seat.

The last point taken arose as follows—

The Respondent alleged that the Petitioner was a Sikh while the constituency was a non-Muhammadan one, and that therefore the Petitioner could not be a candidate for this constituency. The Petitioner, however, raised the objection that this question could not be gone into, because he was shown in the Electoral Roll of the constituency in question, and it must therefore be taken that he was not a Sikh but a Hindu or rather non-Muhammadan. Here we are of opinion that the point can be raised. Our reasons are as follows:—

Rule 9(3) states that the orders made by the Revising Authority as regards an Electoral Roll shall be final. Then Rule 10 lays down that every person registered on the Electoral Roll of any constituency shall be entitled to vote provided that—

(*a*) no person shall vote at any general election in more than one general constituency or both in the commerce and in the industry constituency, and

(*b*) no person shall vote at any election if he is subject to any disability stated in Rule 7.

The effect of these two rules is to make the Electoral Roll final as regards voters except that a voter if he is on the roll of more than one general constituency can only vote in one of them at a general election, and even though he is on an Electoral Roll he is not entitled to vote if he is subject to any of the disqualifications given in Rule 7, i.e., if he is not a British subject or is under 21 years of age, etc. With these qualifications Electoral Rolls are undoubtedly final as regards voters. Further paragraph 5 of Schedule 11 of the rules states that a person shall be qualified as an elector—

(*a*) in a non-Muhammadan Constituency who is neither a Muhammadan nor a Sikh;

(*b*) In a Muhammadan Constituency who is a Muhammadan, and,

(*c*) in a Sikh Constituency, who is a Sikh:

Provided that such person has certain further qualifications. It is further explained in that paragraph that if any question arises as to whether any person is or is not a Sikh, he shall be deemed respectively to be a Sikh according as he makes or refuses to make in such form and manner, as the Local Government may by regulation prescribe, a declaration that he is a Sikh. Further Regulation 2(14) of the regulations published under the notification No. 639, dated August 20, 1923, states that an objection to the registration of an elector on the roll of a Sikh Constituency shall be accepted unless the person objected to appears and makes the decla-

ration Form No. 7 appended to the regulations.

From the above discussion, therefore, it is quite clear that a voter can place himself either on a Sikh Electoral Roll or a non-Muhammadan Electoral Roll subject to his taking or refusing to take the prescribed declaration. That Electoral Roll is final subject to certain qualifications in so far as the person is entitled to vote. It does not follow, however, that the same rules apply to a candidate.

The first rule as regards candidates is Rule 6—

(6) (1) No person shall be eligible for election as a member of the Council to represent a general constituency, unless—

(*a*) his name is registered on the Electoral Roll of the constituency or any other constituency in the province, and

(*b*) in the case of non-Muhammadan, Muhammadan or Sikh Constituency he is himself a non-Muhammadan, Muhammadan, or Sikh, as the case may be.

(6) (2) No person shall be eligible for election as a member of the Council to represent a special constituency unless his name is entered on the roll of that constituency.

(6) (3) For the purposes of these rules—

(*a*) General constituency means a non-Muhammadan, Muhammadan, or Sikh constituency, and

(*b*) Special constituency means a landholders', University, commerce or industry constituency.

This is a general constituency and Rule 6(1) applies. If it is assumed that the Petitioner is on the Electoral Roll of the constituency in question (which is his own allegation) then he fulfills the condition laid dow nin Rule 6(1) (*a*), but there still remains Rule 6(1) (*b*) which is to the effect that he must also be in the case of a non-Muhammadan Constituency, a non-Muhammadan, i.e., he must neither be a Muhammadan nor a Sikh. It is obvious, therefore, that 'Rule 6(1) (*b*) contains an additional qualification for a candidate, i.e., not only must he prove that is on the Electoral Roll of the constituency in question which would be sufficient for a voter, but he must go further and prove that in the case of a Sikh Constituency he is a Sikh and in the case of a non-Muhammadan Constituency he is a non-Muhammadan. The rule is perfectly clear.

Regulation 4 of the regulations is also important. It is to the effect that the Returning Officer shall examine the nomination papers and shall decide all objections which may be made to any nomination and may either on such objection or on his own motion after such summary inquiry, if any, as he thinks necessary, refuse any nomination on any of the following grounds:—

(*i*) That the candidate is ineligible for election under Rule

5 or Rule 6.

We have already discussed above what Rule 6 is, so that it was the duty of the Returning Officer to see that all the conditions of Rule 6 were complied with. Similarly Regulation 4(2)(*a*) is to the effect that for the purpose of this regulation the production of any certified copy of an entry made in the Electoral Roll of any constituency shall be conclusive evidence of the right of any elector named in that entry to stand for election or to subscribe a nomination paper, as the case may be, unless it is proved that the candidate is disqualified under Rule 5 or Rule 6, as the case may be, that the proposer or seconder is disqualified under Sub-rule (4) of Rule 11.

This means that the production of a certified copy of an entry in the Electoral Roll of a constituency before the Returning Officer is conclusive evidence of the right of an elector named therein to stand for election, always provided that the person is not disqualified under the provisions of Rule 5 or Rule 6, therefore proof can be allowed that in the case of a non-Muhammadan Constituency the candidate is a Sikh. We therefore decide that the Respondent is entitled to produce evidence to the effect that the Petitioner is a Sikh.

THE PUNJAB LEGISLATIVE COUNCIL
ROHTAK NORTH WEST (N.M.R.)

CHAUDHRI MATU RAM (*Petitioner*)

versus

THE HON'BLE RAO BAHADUR CHAUDHRI LAL CHAND (*Respondent*)

In India no limit has yet been fixed for the expenses incurred by a candidate. The Commissioners in this case declined to declare the return of election expenses false in material particulars on the basis of one solitary item of fare paid for a motor car, when a sum of Rs.800 was shown as spent on motor hire.

Amendment of petition so as to introduce fresh charges of the particular corrupt practice alleged is not permissible under the election rules.

Each case of personation amounts to a separate charge and even a single case is enough to avoid the election.

The value of finger print evidence for the purpose of identification and as a check on personation has been well established, and such evidence may be taken to be infalable for all practical purposes.

The law of agency in election cases has for a period or many years . . .

been held . . . to go much further than the ordinary law of principal and agent. Various attempted definitions have been given of it, but none has been entirely successful each case in that respect must stand upon its own ground and it really comes to this that the court must see what the relation of the person charged is from the facts of the case, and it is more a matter of inference from facts that anything that is capable of being expressed by positive law.

The question whether a particular person is, or is not, an agent of a candidate is to be decided upon facts and circumstances of each case.

General canvassing for a candidate or general activity at an election including taking voters to the poll have been held to be sufficient to constitute agency.

Where there are three candidates at an election, the Petitioner cannot get the seat only because the successful candidate is unseated. The votes given to the successful candidate cannot be said to have been cast away, and it is not possible to say whether the Petitioner or the third candidate would have succeeded, if the Respondent, who is thus unseated were out of the field.

The charges of "corrupt practices" brought by the Petitioner against the Respondent were (1) Personation, (2) Undue Influence, (3) Treating and (4) Bribery. We consider it, however, unnecessary, to enter into any discussion of the evidence relating to these charges in view of the finding which we have arrived at on the main charge of "personation" round which the real contest has centred in this case. Before proceeding to discuss this charge, however, we may also dispose off the question of the correctness of the return of election expenses of the Respondent. The return was found not to contain the hire paid for one motor car. However, the item, is small one. In India, no limit has yet been fixed for the expenses incurred by a candidate. The Respondent has shown about Rs.80 on account of motor hire in his return and we are not prepared to declare the return to be incorrect or false in material particulars on the basis of this solitary item.

We now proceed to discuss the charge of personation. The Petitioner relied on as many as 61 cases of "personation" in the first instance. The Petitioner applied subsequently to amend the list by introducing 11 more cases of personation, but the application, was disallowed, as we were of opinion that the proposed amendment was not permissible under the rules and secondly that sufficient grounds had not, in any case, been made out for allowing the amendment.

The Petitioner confined himself to 33 cases of personation.

The Petitioner's allegation is that "personation" was systematically resorted to by the Respondent and his agents from the very

outset to ensure his success. Whenever a voter was expected or found to be absent, efforts were made, as far as possible, to find some one to personate him and get a vote recorded in favour of the Respondent.

It is alleged by the Petitioner that in each of the 33 cases referred to above, the "personation" was procured, "abetted", or "connived at", either by the Respondent himself or by persons who were his "agents" within the definition of that terms in the Electoral rules and that consequently, the offence in each case falls within the above definition. According to Rule 44(*b*) of the Punjab Electoral Rules, "any corrupt practice" specified in part 1 of Schedule 5 of the rules is sufficient to render the election of the returned candidate void. It will thus appear that each of the 33 cases of "personation" relied upon by the Petitioner, in itself constitutes a separate charge, sufficient to avoid the election of the Respondent and will, therefore, have to be considered on its merits.

The evidence of the expert has afforded as a most useful test of the correctness or otherwise of the allegations of the Petitioner, in cases where the thumb impression on the counterfoils were clear enough for the purposes of comparison. The value of finger print evidence for the purposes of identification and as a check on personation has been now all established and such evidence may be taken to be infallable for all practical purposes (cf. Donough's Circumstantial Evidence, 2nd edition, pages 69-73; and Will's Circumstantial Evidence, 6th edition, pages 191 to 205). We may mention here that the expert examined in this case was an officer with more than twenty years experience in his line. He has given his opinion with care and caution in each case and no attempt has been made to challenge its correctness.

After discussing the evidence, the learned Commissioners remarked.

"It will appear from the above that personation has been established in 23 cases out of 33 cases relied on by the Petitioner, and that in 8 out of the remaining cases, there are good grounds for suspecting that "personation" has taken place. We are inclined to think that personation would probably have been established in all the latter 8 cases, if the thumb impressions on the counterfoils had been properly taken.

In all the alleged cases of personation with the exception of two, the ballot papers showed that votes had been cast in favour of the Respondent. In two cases, however, the votes were found to be for the Petitioner and these two cases thus turn out to be instances of personation in favour of the Petitioner.

By whom was the personation procured? Before proceeding to

discuss the evidence of the Petitioner on this point it will be useful to consider the general aspect of the question of agency in the present case. In view of the large number of cases in which personation has been proved, there seems no room for doubt that it must have been procured by or the instance of one or other of the parties to this case, or their agents. It is common knowledge that the average Indian villager is yet wholly apathetic about electoral privilege and will rarely take the trouble even to go to the polling station, unless begged on by agents of the candidates. There can be, therefore, no doubt that personation in the above instances, must have been procured either by the Respondent or his agents to ensure the Respondent's success at the poll (as alleged by the Petitioner), or by the Petitioner or his agents, with the ulterior object of defeating Respondent's election by an Election Petition (as contained on behalf of the Respondent). This was accepted as common ground by counsel for both parties. We look upon this as a crucial point in the case and the evidence of the parties will have to be weighed in the light of our finding thereon. If we find any reasonable grounds for suspecting that personation in these instances may have been procured by the Petitioner or his agents, the whole of the Petitioner's evidence must be looked upon with the greatest distrust. On the other hand, if we find good grounds for believing that personation has been procured in the interest of the Respondent, there is no reason why we should be disinclined to accept *prima facie* good evidence on behalf of the Petitioner, unless it is satisfactorily explained or rebutted by the Respondent.

Considering the number of proved and suspected cases of personation in favour of the Respondent, it seems to us extremely improbable that they could have been procured by the Petitioner or his agents. It is conceivable that an unscrupulous candidate, who has reason to apprehend defeat may try to procure one or two cases of personation in favour of his rival, with a view to an Election Petition. But the ordinary instinct of a candidate would be to secure votes in his favour and it cannot be believed that the Petitioner or his agents would have sacrificed so many votes merely with a view to filing an Election Petition. Personation in favour of the Respondent appears to have been procured from the very first day. On the first polling day, at Mehan, there were 5 cases of personation in favour of the Respondent. The Petitioner's chances of success do not appear to have been so hopeless as to lead him or his agents to prepare for on Election Petition from the outset and that too by adding to the number of his rival. From the evidence on the record, it appears that the election was a keenly contested one, and although the Respondent secured a majority of over 400 votes at

Sampla on the last day the polling at the other stations was fairly even, the Petitioner securing a majority at some stations and the Respondents at others.

All the personation cases in dispute, except one, occurred on the first three polling days and a large number at Rohtak where the Respondent's position was apparently weak and the Petitioner got a majority of 119.

The matter had, on the other hand, a different aspect from the Respondent's standpoint. We have it in evidence that the Respondent had hopes of being appointed a Minister and that his partisans were also giving it out that he had a chance of becoming a minister. Leaving aside for the present the question of Respondent's own attitude, it seems quite likely that his partisans were anxious to secure his success at all costs, and some were unscrupulous enough to go to the length of procuring personation to ensure his majority. The systematic attempt to procure personation, which is indicated by the instances of personation at the different polling stations on different dates, is entirely consistent with and intelligible from the point of view of the Respondent and his party.

The manner in which the Petitioner presented his case with respect to the instances of personation, the great difficulty he has experienced in securing the attendance of the majority of his witnesses and the attitude and the character of the evidence of these witnesses in court, seem to preclude the possibility of the instances of personation having been procured by or in the interests of the Petitioner. The Petitioner relied upon 61 instances of personation at first, but in about 28 instances it was discovered by reference to the marked electoral roll that no votes had been recorded at all in the names of the persons alleged to have been personated. Now, if the Petitioner or his partisans had been responsible for procuring personation, the Petitioner could not have been expected to rely on cases, where no votes had been cast at all in favour of any candidate. Nor could he have been uncertain as to who personated a particular voter. It seems fairly obvious that the Petitioner was acting in good faith on such information as he was able to obtain and that although the information received by him proved to be incorrect in some cases, he has, at any rate, not tried to build up his case on the foundation of fabrication.

If the Petitioner or his friends had procured personation with a view to an Election Petition, his witnesses on the point might have been expected to come forward readily to support his case. But he has experienced the greatest difficulty in securing their attendance. Only 20 witnesses appeared on obedience to a summons. Warrants

had to be issued for 13 and 24 did not appear till their property was ordered to be attached. This is a significant commentary on the attitude of these witnesses and leaves no doubt that they are not Petitioner's men. Counsel for the Respondent, unable to find any reasonable explanation for the conduct of these witnesses was constrained to argue that the absconding of the witnesses was also a part of the Petitioner's game and was intended to create an impression that the witnesses are not under the influence of the Petitioner. But this is evidently an argument of dispair and will not bear a moment's scrutiny. None of these witnesses has been shown to be, in any way, interested in the Petitioner. The worst that has been brought out in the cross-examination of these witnesses is that they have some relations in Sanghi, the village of the Petitioner. There is not a single instance in which the voter or personator has been shown to be so connected with the Petitioner as to justify a belief that he may have acted under his influence. Most of the personation cases, in fact, come from villages like Sunari and Singpura, which are the strong-holds of the Respondent and where the chances of detection were probably considered to be small. The Petitioner had been made responsible for securing service of his witnesses and could not afford to take the risk of losing the chance of producing the witnesses, in case no adjournment was granted. He had evidently great misgivings about securing the attendance of these witnesses, as he had asked for permission to produce secondary evidence in the shape of the thumb impression of the voters or personators in the account books of their creditors and so forth. Finally, if these witnesses were absconding at the instance of the Petitioner, they would have at least given evidence in his favour when they appeared in court. But in large number of cases, they have proved hostile and given evidence against him. Out of the alleged personators only 6 have admitted personation at the instance of the Respondent or his agents. Two have attempted to suggest that the personation was procured by the agents of the Petitioner, though their statements appear to be apparently false. Warrants of arrest had to be issued for both of these men. Most of the other personators appeared only after warrants of attachment were issued and totally denied having personated any one. There was a marked difference between the attitude of the personators who appeared at an early stage, before the finger-print expert was examined and those who appeared later. At first the personators had not, as a rule, the courage to deny personation altogether probably because they were conscious that their thumb marks had been taken and thought they could not escape detection. But when the finger-print expert declared a large number of the thumb impressions on the counterfoils to be blurred and

indescribable, information seems to have been conveyed to them, and they adopted a bold attitude and came forward and denied having personated any one. Unfortunately for some of them, a few of the thumb impressions happened to be clear enough for comparison, and the evidence of the finger-print expert has proved that four out of these men not only personated in favour of the Respondent at the time of polling, but have now perjured themselves to support his case. The Petitioner has produced evidence before us that the Respondent's men were going round to persuade the witnesses to keep away or, at any rate, not to give evidence against him. In view of the attitude of the witnesses discussed above, we are not prepared to ignore his evidence as altogether unreliable and it seems to point to consciousness of guilt on the part of the Respondent or his partisans. We may mention here that 22 out of the witnesses, who failed to appear till their property was attached, pleaded guilty to the charge of evading service, when they were called upon to show cause why they should not be fined under Order 16, Rule 10, C. P. C. The remaining two produced some evidence, but it was found unreliable and they too were fined along with others. Several of these witnesses were the real voters and could have absolutely no motive for evading service. The fact that these men were absconding is most significant and leaves no room for doubt that they must have been keeping back in the interests of the Respondent.

It has been already noted that in two instances personation has turned out to be in favour of the Petitioner. But these instances also seem wholly inconsistent with the hypothesis that personation was procured by the Petitioner and cannot, therefore, justify any suspicion against him. If the Petitioner had really tried to procure personation in his favour, he could not certainly be expected to bring these cases to light himself. Nor can it be believed that the personators had been instructed by the Petitioner or his men to vote for the Respondent, but by mistake voted for the Petitioner. The personators are not, in any way, connected with the Petitioner or his partisans. The personator in one case appeared only after his property was ordered to be attached and even then denied having personated any one. In the other case the personator admitted personation in a hesitating manner. The Petitioner has been apparently trying in good faith to prove these cases in the belief that the votes were in favour of the Respondent.

The facts discussed above seem to point unmistakably to but one conclusion, viz., that personation in the cases in dispute could not have been procured by the Petitioner or his partisans but must have been procured in the interest of the Respondent.

We have now to consider in which of the instances, if any, personation is proved to have been procured, abetted, or connived at by the Respondent or his agents. A number of persons have been named as "agents" of the Respondent in this connection, viz., Bal Ram, Bije Ram, Harke, Sufedposh, Dani and others. The Respondent has denied that these men were his "agents". These men were admittedly not the declared agents of the Respondent. But the Petitioner's contention is that they were helping the Respondent during the election and were, therefore, his "agents" within the meaning of the term in election law.

The term agent "has been defined in the Punjab Elecoral Rules as including 'an election agent', and any other person who is held by the Commissioners to have acted as an agent in connection with the knowledge or consent of the candidate" (*vide* Rule 30). This definition leaves a wide discretion to the Commissioners, which is in conformity with the well-established principles of the Election law of agency in England. It was remarked by Grove J. in the Wigan case, "The law of agency in election cases has for a period of many years been held to go much further than the ordinary law of principal and agent. Various attempted definitions have been given of it, but I do not think any one has been entirely successful Each case in that respect must stand upon its own ground and it really comes to this, that the court must see what the relation of the person charged is from the facts of the case and it is more a matter of inference from facts than anything that is capable of being expressed by positive law" (4 O'M. and H., page 10). The reason for this elasticity in the interpretation of the term "agent" is not for to seek. In the absence of such discretion to the court or Commissioners, it would be obviously easy for a candidate, who is inclined to resort to corrupt practices to defeat the law and achieve his purpose through persons who are not his avowed agents.

The question whether a particular individual has or has not been an agent of a particular candidate is therefore, to be decided upon the facts and circumstances in each case. "The substance of the principle of agency is that if a man is employed to get you votes, or if without being so employed nor authorised to get you votes, or if although neither employed nor authorised, he does, to your knowledge get you votes, and you except what he has done and adopt it, then he becomes a person for whose acts you are responsible, in the sense that if his acts are of an illegal character, you cannot retain the benefit which those legal acts have helped to procure for you" (5 O'M. and H. 178). The nature of evidence required to establish agency cannot be precisely defined; but certain principles have been held to be well established. For example, ge-

neral canvassing for a candidate, or general activity at an election including taking voters to the poll have been held sufficient to constitute agency, (cf., Rogers on Elections, 19th edition, vol. 2, pages 601 and 605). In the present instance, the Petitioner's allegations are that the alleged agents canvassed for the Respondent in certain villages or grounds of villages and took voters to the poll. It will appear from the above authorities that these allegations, if proved, will be sufficient to establish agency.

In 5 out of the 21 cases of personation in favour of the Respondent, the Respondent has been named along with his agents, as having procured or abetted personation. The other cases are attributed to different agents. There is direct evidence regarding the procuring of personation in six cases only. In the remaining cases, the Petitioner relied upon circumstantial evidence in proof of agency. It will be convenient to deal with the case of each agent separately at first and then consider the question of Respondent's liability in the end. In the case of each alleged agent, we have to consider (1) whether personation in any instance or instances has been proved to have been procured, abetted, or connived at by him and (2) whether he is proved to be an agent of the Respondent, within the meaning of the term, as explained above.

The proved cases of personation in the interest of the Respondent, which have been attributed to the various agents are as follows:—

Name of alleged agent	No of proved personation cases attributed to him	Reference to cases in the schedule
1. Bije Ram of Medina	5	Nos. 1 to 5
2. Bal Ram, Ziledar of Sundari	4	Nos. 7, 8, 9 and 26
3. Ram Swarup, Ziledar	1	No. 6
4. Ude of Bhallot	1	No. 32
5. Harke of Singhoura	4	Nos. 17 to 20
6. Bishan Singh and Raghunandan Singh of Bohar	2	Nos. 22 and 23
7. Hardawari and others	4	Nos. 27 to 30
TOTAL	21	

After discussing the evidence which showed that Bije Ram canvassed for the Respondent, and brought voters to the polling station, the learned Commissioners observed—

1. We hold it proved that Bije Ram was an agent of the Respondent and that he procured the personation in cases Nos. 1 and 2.

2. Bal Ram. A large number of personation cases have been attributed to Bal Ram. In five out of these personations have been proved, and we have good reason to suspect it in five others . . .

We hold it proved (1) that Bal Ram was an "agent" of the Respondent, as he helped the Respondent in his election by canvassing and taking voters from Sūnari to the polling station, and (2) that he procured the personation in cases Nos. 8, 26 and 10 in the schedule. In the remaining cases from Sunari, we strongly suspect that he was responsible for procuring votes.

5. Harke. In view of the evidence procured, there are good grounds for believing the personation in Singhupura cases must have been procured by Harke, who was working there for the Respondent. Harke had canvassed for the Respondent.

We accordingly hold that (1) Harke was an "agent" of the Respondent and (2) that the personation in the four Singhupura cases referred to above was procured with his connivance.

To sum up we find—

1. Bal Ram, Bije Ram and Harke are proved to have been "agents" of the Respondent,

2. to have procured or connived at "personation" in his interest in eight cases as follows—

Bije Ram—Cases Nos. 1 and 2 in the schedule.

Bal Ram—Cases Nos. 8 and 26 in the schedule.

Harke—Cases Nos. 17, 18, 19 and 20 in the schedule.

We now come to the question of Respondent's personal liability. In three out of the four cases, personation which we have held to have been procured by Bije Ram and Bal Ram, the Respondent has been named by the personators along with these men, as having procured personation. The personators deposed that they were told by the Respondent himself that there was nothing wrong in what they were asked to do, and that on this assurance they personated certain voters and cast their votes in his favour. As already pointed out these witnesses are not shown to have any motive for giving false evidence against the Respondent, and *prima facie* we find no good ground for disbelieving their statements in respect of the Respondent. The Respondent's suggestion is that his enemies have deliberately procured personation in his favour with a view to unseat him. We have already discussed the general question of agency and found that the facts on record show unmistakably that personation was procured not by the Petitioner or his partisans but by the Respondent or his partisans in order to ensure his success.

There is no doubt that the Respondent had a momentous issue at stake in the result of the election. The Respondent was practi-

sing as a pleader in the mufassil and we have it from him that his professional income was at least Rs. 750 to Rs. 1,000 per mensem. He had evident hopes of becoming a minister and the temptation cannot be considered small. The fulfilment of his hopes depended, in the first instance, on the result of the election. The election was keenly contested one, and he must have naturally been anxious to ensure his success.

There is an important piece of evidence before us, which throws a flood of light on the Respondent's attitude in prosecuting his election campaign, and that is the employment by the Respondent of one Tek Ram, a desperado, as an agent. This Tek Ram had an unenviable record. He had been twice tried for murder. He had been charged with a serious assault on a Sub-Inspector of Police. His movements had been restricted under Act 5 of 1918 and Section 110, Criminal Procedure Code. He had also been entered under the Defence of Indian Act. The Respondent admits in his statement that Tek Ram is of desperate character. He also admits that Tek Ram and his party helps him at Samchana and brought voters from that village. Respondent's statement, as a defence witness for Tek Ram, when Tek Ram was tried on a third charge of murder in last January, i.e., after the election is still more explicit. Respondent then deposed that Tek Ram helped him throughout the election, from 20th to 26th November, and that he worked for him also before the actual polling. It is inconceivable that any candidate, who wished to keep his hands perfectly clean, would have thought of employing a man of the type of Tek Ram for furthering his election. This fact shows beyond doubt that the Respondent was not scrupulous about the selection of his agent, and if he was not scrupulous about the selection of his agent, would it be surprising, if his attitude was the same with respect to the choice of his means.

As regards Respondent's own activity, Sheikh Abdul Aziz states:—"I saw Chaudhri Lal Chand himself leading the voters to the polling booth at these various polling stations. Chaudhri Lal Chand was bustling about amongst his own voters. Occassionally he accompanied the voters to the polling booth himself. He was going to and fro from one polling station to the other." To the same effect is the evidence of Pt. Devi Dayal Joshi, another presiding officer at Rohtak. Even, the evidence of Qazi Fazal Illahi, whose bias in favour of the Respondent is apparent, shows that the Respondent was very active at all the above-mentioned polling stations and was "moving round and round like a wasp", as he graphically expressed it in the vernacular. It is difficult to accept the Respondent's statement

that he took no interest in the voting and merely contended himself with seeing that there was no breach of the peace. Qazi Fazal Illahi states that the Respondent had a printed list of voters, a map, and a pencil in his hand, when he was going about. Can it be believed that he made no use of these? The answer is, we think, obvious. The Respondent was evidently taking keen interest in the voting—as was only natural—and has been compelled to take up the above position only, through apprehension of being fixed with knowledge of the "corrupt practices," which were resorted to, in order to further his interests. We think that there is little room for doubt that this systematic and widespread campaign of personation is to be traced to the same instinct that dictated the employment of the desperado Tek Ram.

We have given this case our anxious consideration from the outset in view of the position of the Respondent and the consequence which our findings might involve. But after carefully considering the evidence before us, we are compelled to hold that the Respondent abetted personation in the aforesaid three cases in which he has been specifically named by the personators, and that personation in other cases was connived at by him. On behalf of the Respondent, reference was made to the Punjab South East case of 1920, and it was urged that the percentage of the proved cases of personation is insignificant as compared with that case. But we do not think that this can by any means be considered a decisive factor. The law looks upon the offence of personation as a serious and even a single instance brought home to a candidate or his agent is sufficient to avoid an election. There are also several other distinguishing features in the present case. In the Punjab South East Town case, there was apparently no direct evidence as regards the procuring of personation against the candidate or his agents—the charge being one of the connivance (*see* I. E. P., page 165). In the present instance, there is direct evidence against the candidate as well as his agents. There are also other important facts to be taken into account—such as the employment of a man of the type of Tek Ram as an agent, the presence of the candidate at different polling stations, the active interest taken by him, and finally the systematic attempt to procure votes by personation on different dates and at different polling stations.

Our unanimous findings are (1) that Bal Ram, Bije Ram and Harke were agents of the Respondent and were guilty of the corrupt practice of personation under Part 1 of Schedule 5 of the Punjab Elecoral Rules, and (2) that the Respondent himself was also guilty of the same corrupt practice,—by abetment and connivance.

Under Rule 45 we have to report accordingly that the Respondent was not duly elected. The Petitioner has asked for a declaration that he was duly elected; but we do not think he is entitled to such declaration, and it is not possible to say whether the Petitioner or the third candidate would have succeeded, if the Respondent were out of the contest. All the votes given to the Respondent cannot be considered to have been thrown away (cf., I. E. P., page 221; also Rogers on Elections, 19th edition, pages 129-30).

The Respondent and the above-mentioned agents, Bije Ram, Bal Ram and Harke have incurred the disqualification referred to in Rules 5 and 7. Bal Ram and Harke, who had not appeared as witnesses, were called upon to show cause why they should not be reported to be guilty of the corrupt practice of personation (*vide* proviso to Rule 47). Their pleas were to the same effect as advanced by the Respondent. The supplementary evidence produced by them has been recorded. It has, in fact, only served to strengthen our conclusions.

We also report that the following persons, who have either admitted having personated certain voters, or have been proved to have done so, have also incurred disqualification under the same rule.

1. Ratia Singh P. W. 17.
2. Kanhayia, son of Chandu P. W. 18.
3. Kanhayia, son of Jai Lal P. W. 22.
4. Shiby P. W. 54.
5. Maula P. W. 55.
6. Kurara P. W. 32.
7. Jas Ram P. W. 20.
8. Rullia P. W. 21.
9. Mauji P. W. 88.
10. Shiva Ram P. W. 15.
11. Jita P. W. 64.
12. Nihala P. W. 103.
13. Sarupa P. W. 91.
14. Chandgi P. W. 34.
15. Badlu P. W. 21.

As regards costs, the Petitioner had to fight this case against great odds. The charge of personation is not an easy one to prove and the Petitioner's difficulties were increased by the position of the Respondent and the pressure which was evidently being brought upon the witnesses from the outset with a view to stultify the inquiry. We think, the Petitioner is entitled to get substantial costs from the Respondent. In the circumstances we assess the costs at

Rs. 3,500.

M. V. BHIDE
J. M. MACKAY
D. C. RALLI

BEHAR AND ORISSA LEGISLATIVE COUNCIL
SAMASTIPUR (N.M.R.)

MAHESHWAR PRASAD NARAIN SINGH (*Petitioner*)

versus

RAJSRAY PRASAD CHAUDHRI (*Respondent*)

A discrepancy in the father's name of a person cannot be considered a case of mere misdescription.

The nomination paper of the Petitioner was rejected with the result that the Respondent was declared duly elected.

The points for determination in the case is whether the proposer and the seconder are identical with the persons whose electoral numbers they have given in the nomination paper. The number given against the proposer Gudar Thakur is 100. The Electoral Roll shows against this number one Gudar Thakur, the son of Daun Thakur. Against the number given by the seconder Nirsan Thakur which is 228 in the Electoral Roll is shown Nirsar Thakur, the son of Manbhawan Thakur. It was established before the Returning Officer that the proposer's father's name was not Daun Thakur but Gopal Thakur, and that the seconder's correct name was Nirsan Thakur and not Nirsar Thakur and that his father's name was not Manbhawan Thakur but Guni Thakur.

It is now said that these are cases of mere misnomer or misdescription and that Gudar Thakur and Nirsan Thakur were in fact qualified to propose and second the Petitioner. In the Purnea case, I. E. P. vol. 1, 178, a seconder subscribed himself as "Modo Sahu", son of Muni Lal Sahu "whereas the register showed that he was "Modo Sahu", son of Manni Sahu". This was considered to be a case of misdescription, but in the present case the discrepancies are much more serious and in our opinion the affidavits filed by the Petitioner are not sufficient to establish the identity. The affidavits of Gudar Thakur and Nirsan Thakur state that the Electoral Roll is incorrect, and that there are no other persons of the names of Gudar Thakur and Nirsan Thakur in the villages. A Collecting Punch named Ramsaran Thakur also files an affidavit swearing that he was in charge of the preparation of the Electoral Roll and that the misdescription "crept into the roll by oversight". The Collecting Punch, however, was

not the officer who was charged by the regulations with the duty of preparing and publishing the Electoral Roll. We do not see how he can affirm that by entering Gudar Thakur, the son of Daun Thakur as an elector, the registration officer meant Gudar Thakur, the son of Gopal Thakur; for all we know the mistake may lie in the elector's name and not in the father's name and that the elector intended to be entered was a person who was the son of Daun but whose name was not Gudar. Similarly in the case of the seconder although the discrepancy between Nirsan and Nirsar may be a case of misnomer, we do not think that the discrepancy in the father's name can be considered a case of misdescription.

The result is that the petition fails, and we report that the returned candidate has been duly elected. Petitioner to pay Respondent's costs which we assess at Rs. 80.

B. K. MULLICK
J. F. W. JAMES
A. D. PATEL

BEHAR AND ORISSA LEGISLATIVE COUNCIL
SARAN SOUTH (N.M.R.)

NIRSU NARAIN SINGH (*Petitioner*)

versus

CHANDRAKETU NARAIN SINGH (*Respondent*)

It may be doubted whether the imputation of legitimate ambition to a candidate can be reasonably regarded as prejudicing the prospects of his election.

The name of the press on a pamphlet may be taken as the trade name of the printer. By the comity and custom of the printing trade, the printer of a pamphlet is assumed to be the publisher also.

Exaggerated benevolence with a view to secure a political purpose of obtaining votes amounts to bribery, but acts of benevolence which are innocent in themselves, cannot be treated as corrupt merely because political capital has been subsequently made out of them.

The Petitioner was the unsuccessful candidate. He contested the election on numerous grounds.

One statement to which objection is taken appears in a pamphlet issued by the Respondent to the effect that the Petitioner hopes for a judgeship or for appointment as a minister, and that in seeking election to the Council he is hoping to gratify his own ambition.

It may be doubted whether the imputation of a legitimate

ambition to a candidate can be reasonably regarded as prejudicing the prospect of his election; but the question does not arise, because it appears that the statements are true. (On evidence).

The Petitioner has taken objection to another statement which appears in one of the pamphlets issued in support of the Respondent's candidature, which runs as follows:—"We have no necessity for a vakil who foments or supports quarrels for gain. Of what service can such a man be?" Apart from the question of whether the pamphlet in which this remark occurs was issued with the authority of the Respondent, we may observe that although we do not defend or support this contemptuous estimate of the lawyer's profession, it must be admitted that abuse of this kind will be commonly found in any electioneering contest where one of the candidates is a lawyer and the other is not. It is clear that the words in the pamphlet do not mean that the Petitioner is a bad kind of lawyer; and a remark of this kind cannot be treated as a slanderous statement affecting the candidate's personal character.

It is alleged that none of the pamphlets issued on behalf of the Respondent bear the name of the printer and publisher as required under the rules, and two of them at least do not even bear the name of the press.

The two pamphlets which do not bear the name of the press are two issues of a pamphlet called Sucha. There were three issues of this pamphlet, each of two thousand copies, printed at Nath Press at Chapra; of which one issue only bears the name of the press. The wording of the pamphlet is identical. There is nothing objectionable in the pamphlet; and in view of the fact that the name of the press has been actually given in one of the issues, we are of opinion that the omission in the other is accidental.

The rest of the circulars bear the name of the press; but the Petitioner objects that they ought to bear the name of the printer and publisher also. It may be observed that in this respect the pamphlets are exactly on the same footing with those issued by the Petitioner. The name of the press may be taken as the trade name of the printer; and we are prepared to accept the view that by "the comity and custom of the printing trade" the printer of a pamphlet is assumed to be its publisher also. In any case we cannot find that the omission of the name of the printer or publisher of any pamphlet has affected the result of the election so as to bring it within the provisions of the sub-section (*a*) or (*c*) of Rule 44(1); and therefore the election cannot be declared void on this count.

Two specific instances of treating with a view to obtain votes were given. The first is relating to members of the Seva Samiti

at the last Sonepur fair, regarding which no evidence has been given. The second charge under this head is that Babu Chandraketu Narayan Sinha during the flood of August, 1923, distributed food at Sonepur station, and that subsequently in his election pamphlets he made capital out of this, claiming votes on the grounds of his generous expenditure during the flood.

The Petitioner argues that the subsequent making of political capital out of these acts of benevolence indicates that the acts of benevolence were made with a corrupt motive; but in this matter we must be guided by the English rule, and hold that since the acts of benevolence were in themselves innocent, they cannot be treated as corrupt merely because political capital has been subsequently made out of them. The Petitioner takes fresh ground in arguing that the benevolence has been exaggerated for political purposes, and that such exaggeration amounts to a corrupt practice. We agree that exaggeration of this kind would be highly objectionable, but apart from the fact that the general statements made on behalf of the Respondent in this connection have not been shown to be false or exaggerated, we may observe that it would be difficult to bring exaggeration of this kind within the definition of bribery which is given in the Electoral Rules.

A recriminatory petition has been filed by the Respondent, but not one of the allegations was held proved.

The result is that both the petition and the recriminatory petition fail. We direct that each party do bear his own costs.

J. F. W. JAMES
RADHAKANTA GHOSE
A. D. PATEL

BIHAR AND ORRISSA LEGISLATIVE COUNCIL
SHAHABAD (M.R.)

SHEIKH MAHMOOD HASSAN KHAN (*Petitioner*)

versus

MR. SAIYID ATHAR HUSSAIN (*Respondent*)

The nomination of the Petitioner was rejected by the Returning Officer. He was proposed by two nomination papers.

It appears that the constituency has been subdivided and one of the Petitioner's proposers described the subdivision in which he is registered as "Zila Shahabad, Thana Mohania, Police Station Khudra, Subdivision Bhabua." The second described himself as "No. 29, polling station Thana Bahara, Thana Arrah (Subdivision

Arrah)." Under Rule 11 of the Behar and Orrissa Election Rules the nomination paper has to be in the form prescribed by Schedule 3 and a note to the form in question requires that where the Electoral Roll is subdivided and seperate serial numbers are assigned to the electors entered in each subdivision a description of the subdivision in which the name of the elector is entered must also be given. The Returning Officer was of opinion that the correct description of the subdivision in the case of each proposer was the polling station, and that the nomination papers were invalid.

There is nothing to indicate that the various areas into which the constituency has been subdivided for convenience of polling are required to be described by the names of the polling stations. It is obvious that what the Registration authorities have done is to form subdivisions according to revenue thanas and they have included within each such polling area the police stations falling within the thana. As a mode of description a reference to the revenue thana would be perhaps more appropriate than the name of the polling station; and in the absence of any express direction, we think the description given in the nomination paper was compliance with the rules.

The result is that the election is void. We assess the costs of the Petitioner at Rs. 80 to be paid by the Respondent.

B. K. MULLICK
J. F. W. JAMES
A. D. PATEL

PUNJAB LEGISLATIVE COUNCIL
SHEIKHUPURA CASE (M.R.)

MIAN HAQ NAWAZ (*Petitioner*)

versus

MALAK KHAN MOHAMMAD KHAN (*Respondent*)

For the purposes of identification, the reliability of the evidence based on the comparison of finger prints is well established.

The term agent has a very wide meaning in election law, and the relation law and the relation is more like that of master and servant, where the former is held liable for the unauthorised or negligent acts of the latter. No appointment is necessary and the relationship of agency is to be inferred from facts, and circumstances of each case.

In dealing with a criminal or quasi-criminal charge like that of personation, suspicion, however strong cannot take the place of positive proof, and before basing a decision on circumstantial evidence, every reasonable

hypothesis consistent with the innocence of the person charged must be excluded.

The Petitioner relied on 21 cases of personation. The voters and alleged personators were produced as witnesses, but they did not support the Petitioner. The real voters asserted that they did vote, while the alleged personators denied having voted at all. Thumb impressions of all these men were, however, taken before us and a comparison of these with those on the counterfoils of the ballot papers, by an expert from the Finger Print Bureau, Phillaur, showed that the thumb impressions of the real voters did not agree with those on the counterfoils of the ballot papers in three cases, while thumb impressions of the alleged personators did agree with the thumb impressions on the counterfoil in the said cases. In another case it found that the thumb impression on the couterfoil of the ballot paper, though the thumb impression of the real voters was too blurred for comparison.

It will thus appear that the expert's evidence supports the Petitioner's allegations as to personation in four cases. Though the oral evidence of the voters and the alleged personators with respect to these cases is against him, it cannot be believed in the face of the evidence of the finger-print expert. These men have probably perjured themselves with the idea that they would get into trouble if they told the truth. For the purposes of identification, the reliability of evidence based upon comparison of finger prints has been now well established. (cf. Donough's Circumstantial Evidence, 2nd edition, pages 69-73) and no attempt has been made on behalf of the Respondent to challenge it. 'Personation' by itself is, however, not sufficient to avoid an election unless it falls under Part 1 of Schedule 5 of the Electoral Rules, i.e., unless it is procured or 'abetted' by a candidate, or his agent or by some other person 'with their connivance' (*vide* Rule 4(*b*) and the definition of personation, as given in Part 1 of Schedule 5 of the Electoral Rules). We have, therefore, to see whether the Petitioner has established 'agency' with respect to the above personation case, so as to bring them under Part 1 of Schedule 5. The Respondent Khan Mohammad was admittedly present at the polling station where personation in the above-mentioned four cases is said to have been procured. But the Petitioner's allegation is that Respondent's father Mahabat Khan and Feroze Din Jogi, a friend of the latter, were present there and were acting as his agents and that these persons procured the personation. On behalf of the Respondent, the presence of Mahabat Khan and Feroze Din Jogi is not denied, but it is urged that they had not been appointed 'agents' by the Respondent. But the term 'agent' has a

very wide meaning in election law. It is not restricted to the ordinary relation of principal and agent. The relation is more like that between master and servant where the former is held responsible for the unauthorised or negligent acts of the latter. No appointment as an agent is necessary and the relationship has to be judged from the facts and circumstances of the case. This law of agency is well established in England (cf., 4 O'M. and H. at page 10, 1 O'M. and H. 10, 11) and the definition of the term 'agent' in the Punjab Electoral Rules shows that it has a similar meaning in India. Mahabat Khan, on his own showing was present at the polling station referred to above to canvass and promote the interests of his son. Feroz Din Jogi professes to have gone to the polling station to vote. But there is reliable evidence of independent witnesses such as the Presiding Officer to show that he too was working for the Respondent. We therefore feel no difficulty in holding both these men to be 'agents' of the Respondent for the purposes of his election. There is, however, no direct evidence of a reliable nature to connect these men with the cases of personation. The Petitioner who was himself there had to admit that he was not prepared to say that that Mahabat Khan or Feroze Din actually did put forward the personators. He, however, urges that the personators are meanials belonging to Karkan, the village of the Respondent; that Mahabat Khan, father of the Respondent, is a ziladar and man of influence and was working for the Respondent at the polling station, and that under the circumstances it may be presumed that the cases of personation were procured or at any rate connived at by him. The above facts, no doubt raise a strong suspicion against Mahabat Khan but are not, in our opinion, by themselves sufficient to justify a definite finding that he procured or connived at the personation. The Petitioner has mainly relied upon the Punjab South East Town case of 1920 (*See* 1 I. E. P. 165), but that case is clearly distinguishable from the present case. In the Punjab South East Town case, out of 15 votes cast in Simla Kalan (the village of the Respondent in that case) fifteen cases of personation were proved and the Commissioners had strong reasons to suspect five others. The total number of votes cast for both the candidates was small being less than 200 for each candidate and thus the percentage of personation cases was high. In the present case, out of the four personation cases relied on by the Petitioner, only two relate to Karkan, the village of the Respondent. In one of these it is definitely proved that the personator was menial belonging to Respondent's village. The net result is that out of 1664 votes cast for the Respondent, only one case of personation by a meanial belonging to his village is es-

tablished and it is only in respect of this case, that there may be said to be strong reasons to suspect that personation was 'procured' or 'connived at' by the Respondent's father, who was present at the polling station. But an isolated instance of this kind has to be judged with caution and is, in our opinion, inadequate to justify a definite finding to this effect in the Petitioner's favour. It is a tried proposition of law that in dealing with a criminal or quasi-criminal charge like the one under discussion, suspicion, however strong, cannot take the place of positive proof. We are dealing in this instance with mere circumstantial evidence and before basing a decision upon such evidence, every reasonable hypothesis consistent with the innocence of the person charged, must be excluded. It has been suggested on behalf of the Respondent that an isolated case of personation may be due to the ignorence of a voter who may have attempted innocently to vote by proxy or possibly to the machinations of a scheming rival candidate. We do not think the circumstances, relied on by the petition, are by themselves sufficient to exclude the possibility of such explanations. It was remarked by Martin B., in the Westminister case, "The law (Law of Agency) is a stringent law, a harsh law, a hard law. But, I think, I am justified when I am to apply such a law, in requiring to be satisfied beyond all doubt that the act was done; and unless the proof is strong and very cogent—I should say, very strong and very cogent—it ought not to affect the seat of an honest and well-intentioned man by the act of a third person" (1 O'M. and H. 95). The Petitioner has failed to adduce any such 'strong and cogent' proof in this case.

We accordingly find that although four cases of personation were 'procured', abetted, or 'connived at' by the Respondent or his agents. Under the circumstances, these cases only serve to reduce the Respondent's votes by four and cannot affect the result of the election, as he had a majority of over 500 votes. We propose, however, to bring the cases of personation to the notice of the Deputy commissioner, Sheikhpura, with a view to the prosecution of the offenders under the Indian Election Offences and Inquiries Act (39 of 1920) after such further inquiry as he may consider advisable.

The petition fails. As, however, there are reasons to suspect that the hands of the Respondent or his agents have not been clean we fix his costs Rs. 200 to be paid by the Petitioner.

M. V. BHIDE
J. M. MACKAY
D. C. RALLI

BEHAR AND ORRISSA LEGISLATIVE COUNCIL
TIRHUT DIVISION LANDHOLDERS

MADHAVA SURENDRA SAHAI (*Petitioner*)

versus

RAI BAHADUR KRISHNA DEVA NARAIN MAHTHA (*Respondent*)

The Petitioner was a candidate for the Tirhut Division Landholders Constituency, but in his nomination paper he gave the name of the constituency as "Landholders (Tirhut Division)". The Returning Officer held that the misdescription as to the name of the constituency was fatal and rejected the nomination paper.

In our opinion the Returning Officer's decision cannot be supported. The misdescription, if any, was trivial and should have been condoned.

The result is that we declare the election to be void. We assess the costs at Rs. 80 and recommend that the same be paid by the Respondent to the Petitioner.

B. K. MULLICK
J. F. W. JAMES
A. D. PATEL

BENGAL LEGISLATIVE COUNCIL
24-PARGANAS (M.R.)

A. SUHRAWARDY (*Petitioner*)

versus

SAIYAD NASIM ALI (*Respondent*)

If a person on the register is called by a wrong name, that will not vitiate his vote. Upon the same principle it follows that a person incorrectly described in the Electoral Roll is not thereby debarred from acting as a proposer of a candidate.

The proceedings were *ex parte* as the Respondent did not appear although notices were served on him.

The Petitioner's proposer as stated in the nomination paper was Kazi Abdul Jalil, whose name was wrongly printed as Kazi Abdul Janis, son of Kazi Mohommed Hatim, the other particulars correct. At the same time when Kazi Abdul Jalil presented the nomination

paper he entered his name under the head of "proposer" as Kazi Abdul Janis and within brackets Kazi Abdul Jalil. He explains that the reason why he made the duplicate entry was to bring his name into conformity with the name wrongly recorded in the Electoral Roll. He filled up the details required as to the number, etc., and signed his correct name below in the appropriate line.

The Returning Officer, in his certificate of scrutiny observed that the proposer's name is Kazi Abdul Jalil, whereas the name in the voter's list is Abdul Janis. The proposer is not present and there is nothing to show that Abdul Jalil and Abdul Janis are the same person. He therefore rejected the nomination paper.

From evidence and from our inspection of the list we are satisfied that the real entry was Jalil and not Janis.

It was held in the case (Oldham, 1869, 1 O'M. and H. 153) that if a person on the register is called by a wrong name, that will not vitiate his vote. Upon the same principle it would follow that a person incorrectly described in the Electoral Roll is not thereby debarred from acting as a proposer of a candidate.

For these reasons we think that the nomination paper was improperly rejected. The effect of this has been materially to affect the result of the election, and we are therefore of opinion that the returned candidate has not been duly elected.

In view of the fact that the hearing was *ex parte* and the Respondent was in no way responsible for the mistake, we recommend that the parties bear their own costs.

A. J. CHOTZNER
D. C. PATTERSON
SARODA PRASAD BAKHSHI

BENGAL LEGISLATIVE COUNCIL
24-PARGANAS (M.U.)

NAWAB MIRZA SHUAJAT BEG KHAN BAHADUR
(*Petitioner*)

versus

MAULVI MAHBOOBUL HAQ (*Respondent*)

By mistake one ballot box containing ballot papers was not opened at the time of the counting and the Respondent was declared elected but the mistake was discovered before the Returning Officer had submitted his return, and the missing ballot box found, and its contents counted resulting in a majority in favour of the Petitioner. The Returning Officer however thought that he could not declare the Petitioner elected as he had al-

ready declared the result of the election, and referred the matter to Government. The Respondent was published in the gazette as having been duly elected. It was held that the Returning Officer could not under the rules announce the result of the election before the counting of votes had been completed, and as in this case the first announcement made before the contents of one ballot box were counted, the Returning Officer should have taken into account the contents of the said ballot box also. At any rate the Commissioners could take the said ballot papers into account and declare the Petitioner elected.

The Petitioner and the Respondent were the only two candidates for election. Counting was done in the presence of the parties and their agents. The Returning Officer announced the result and declared the Respondent elected. The Petitioner obtained 911 votes and the Respondent 936 votes. Soon after the verification statement required by Regulation 47 was being prepared, it was discovered that one ballot box from this constituency had not, by mistake been opened. The Returning Officer sent for the candidates at once. The Petitioner turned up and an agent of the Respondent also came and the contents of the ballot box were opened in their presence. Two hundred and four ballot papers were found in the box. Eighty one were in favour of the Respondent, while 123 votes were for the Petitioner. One ballot paper was rejected. The total votes for each candidate thereupon stood, for the Petitioner 1,234 and for the Respondent 1,017. This result reversed the decision arrived at when the votes were first counted. The Returning Officer thought that his first declaration was invalid, but he was not sure if he could make a second declaration and he thereupon submitted his report to Government for instructions. We do not know what the instructions were, but the Respondent's name was published in the Calcutta Gazette as that of the elected candidate.

The learned pleader for the Respondent contends that the returning was *functus officio* after he made the first declaration. It is argued that the Returning Officer should not have opened the unopened ballot box. Certain English cases have been cited. They are mentioned in Parker, page 385. The English Rule is that if a mistake is discovered after the Returning Officer has declared the result "the mistake can only be rectified by filing an election petition praying for a recount." It seems to us that this is the procedure which has been followed in this case. The Returning Officer having made his declaration, he was not entitled to reverse his decision. The English cases cited do not show that the Returning Officer cannot ascertain his mistake. Turning to our rules and regulations, it

cannot be said that the Returning Officer was *functus officio.* He had still to make the return mentioned in Regulation 49 and the report to the Secretary of the Council under Rule 44(9). It may be even said that the first declaration was a void declaration as it was made on an incomplete counting. Rule 14(7) states that "when the counting of votes has been completed, the Returning Officer shall forthwith declare the candidate, to whom the largest number of votes has been given, to be elected." The counting of votes had not been completed inasmuch as the contents of one box had not been taken into account. The Returning Officer, was not, therefore, *functus officio.* Even if he was, it is open to us to take into account the contents of this box.

The learned pleader for the Respondent contends that the petition was not maintainable inasmuch as the Petitioner had not asked for a recount. Rule 33(1) states that "the petition shall contain a statement in concise form of the material facts on which the Petitioner relies" and Rule 34 says that "the Petitioner may, if he so desires, in addition to calling in question the election of the returned candidate, claim a declaration that he himself has been duly elected." The Petitioner has done this and has asked that on the votes ascertained by the Returning Officer, he should be declared and returned as duly elected since he obtained the largest number of votes. It is common ground that upto the declaration made by the Returning Officer on the first count, the counting is correct. The only question is whether the contents of the box which was subsequently found should be taken into account. The Returning Officer has deposed that had he made the discovery earlier, he would have declared the Petitioner as elected. The learned vakil for the Petitioner has quoted a case which is *in re* North-East Derbyshire Election, Holmes *v.* Lee reported in 39 Times Law Reports, 1923, page 423. It appears that in this case three ballot papers at a Parliamentary Election were found in different boxes, after a lapse of 11 days it was held that as these papers had been inadvertently left in the boxes, in the particular circumstances of the case the three votes must be allowed. We hold that the ballot papers in the above-mentioned box must be taken into account.

Our conclusion is that the Respondent has not been duly elected and that his election and return should be set aside and that it should be declared that the Petitioner was duly elected from this constituency.

Since the Respondent was not responsible for the mistake which has resulted in this Election Petition, we recommend that the

parties should bear their own costs.

G. N. ROY
G. B. MUMFORD
G. N. MUKERJI

INDIAN LEGISLATIVE ASSEMBLY
WEST COAST AND NILGIRIS (N.M.R.)

KUMARAN RAMAN (*Petitioner*)

versus

K. SADASHIVA BHAT (*Respondent*)

The statement that a candidate, when a member of legislative body voted in a particular manner, and he sacrificed the real interests of the country by failing to act in particular manner as member is not a statement in relation to the personal conduct and character of the candidate, and therefore does amount to a corrupt practice, even when false to the knowledge of the candidate making it.

The prayer in this petition is that the election of the Respondent as a member of the Legislative Assembly for Malabar, South Kanara and the village Nilgiris be set aside on the ground that he has been guilty of a corrupt practice within the meaning of Rule 4, Schedule 5 of the rules for the nomination and election of members to the Legislative Assembly, in that he published false statements that the Petitioner "sacrificed the real interests of the people by his voting with the Government for the enhancement of the salt tax" and "by his failing to join in the struggle against the present inequitable provincial impost." It is alleged that it is false to say that the Petitioner did so vote, or did so fail to join in the struggle against the impost.

The latter allegation appears to us wholly an expression of opinion of the Petitioner's political conduct and no question of its truth or falsity in fact arises.

We think that the conclusion is irresistible that, the Respondent did not believe that the statement (that the Petitioner voted with the Government for the enhancement of the salt tax) to be true, and yet allowed its publication to continue, and we feel no doubt that the Respondent did publish regarding the Petitioner a statement which he did not believe to be true—a statement reasonably calculated to prejudice the prospects of the Petitioner's election.

The remaining questions whether this statement is a statement in relation to the personal conduct and character of the Petitioner. This is a point which has been strenuously argued on both sides. We

think that the correct method of deciding the point is to determine first, assuming that the statement that the Petitioner voted with the Petitioner for the enhancement of the salt tax is true, whether that would be a statement in relation to the Petitioner's personal character and conduct. We are agreed that it cannot be so held. No sort of reflection or imputation is on the Petitioner's character or conduct by the mere assertion that he voted on a particular measure in a particular way. It is an assertion of historical fact, a mere setting forth of an account of a political act of the Petitioner in his political career. What result that act may have had on the interests of his constituents, whether it will, for instance, be a sacrifice of their interests or not, is not a question of fact, but of opinion, and any statement to that effect is not a statement of fact, but is mere statement of opinion, and therefore, will not come within the meaning of the rule.

This conclusion is strengthened by a reference to certain English Election cases which have been cited to us, and which have a particularly petinent bearing on this point, since the very language we are now considering has been taken *en bloc* from the Corrupt and Illegal Practices Prevention Act, 58 and 59 Vic. Chap. 40 in 1895. Six election cases under that Act have been cited to us, reported in Vol. 5, O'M. and H. page 53, 89, 153, 186 and 218 and Vol. 6, O'M. and H. page 103. In all these, the general principle is that a statement in relation to the personal character and conduct of a candidate must import some reflection or imputation on that chararcter and conduct. The two cases must in the point are the North Louth case, 6 O'M. and H. 103, and the Cockermouth case, 5 O'M. and H. 155. The former interprets "personal" as antithetical to public, and the latter interprets it as antithetical to political. The latter case is particularly instructive. One of the allegations there made against the candidate was in the statement that was made—

"Electors. Remember that the enemy was beseiging British Town and wrecking British homes when Sir Wilfrid Lawson voted against sending men, money and supplies."

That is, as here, the statement was that the candidate had voted in such and such manner in the House of Commons. On this Mr. Justice Darling remarks (page 164)—

"What Sir Wilfrid Lawson desired from his conduct was, if he could get enough other people to agree with him and to go into the same lobby with him to force the Government to resign, so that there might come into office a Government holding the same opinions as himself about the war, and prepared to bring it to an end

upon terms which would approve themselves to him and to his friends. But to say that is not to say that he meant to starve the troops. To say that he did that, is to criticise his political conduct. It is not to criticise his personal character or his personal conduct. And further than that, it appears to me that what he said here about Sir Wilfrid Lawson and his votes is not false, it is to a very large extent true, as I have said. The natural consequence of the vote he gave be a perfectly constitutional reason for the resignation of the Government and the forming of another, and would not be the staring of the troops in South Africa, and therefore, even if it were not true it seems to me that that was criticism of the political action of Sir Wilfrid Lawson, and not criticism of his personal character or conduct in any shape or form."

That is, all comments that a man voted in such and such manner is comment as to his political conduct and not as to his personal conduct.

We, therefore, hold that no corrupt practice by the Respondent has been proved and the petition cannot, therefore, stand and must be dismissed.

In the view we take of the Respondent's conduct, we direct that each party bear his own costs.

E. H. WALLACE
V. V. SRINIVASAN
P. SUBBIAH

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